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TRANSCRIPT OF RECORD. 613

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~1284~~ 857 512 ~~214~~ 24

ANDREW J. COFFEE, PLAINTIFF IN ERROR,

vs.

JAMES M. GROOVER, EVERETTE P. GROOVER, THOMAS J. McINTOSH, SALLIE E. McINTOSH, CHARLES A. McINTOSH, GEORGIA C. McINTOSH, AND CHARLES A. GROOVER AND M. ALICE GROOVER, BY THEIR NEXT FRIEND JAMES M. GROOVER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED APRIL 15, 1884.

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OCTOBER TERM, 1883.

No. 1281.

ANDREW J. COFFEE, PLAINTIFF IN ERROR,

vs.

JAMES M. GROOVER, EVERETTE P. GROOVER, THOMAS J. McINTOSH, SALLIE E. McINTOSH, CHARLES A. McINTOSH, GEORGIA C. McINTOSH, AND CHARLES A. GROOVER AND M. ALICE GROOVER, BY THEIR NEXT FRIEND JAMES M. GROOVER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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1 Be it remembered, that on the 13th day of June, A. D. 1883, at a regular term of the supreme court of the State of Florida, came the plaintiff in error, Andrew J. Coffee, by counsel, and filed in the clerk's office of the supreme court of Florida a transcript of the record of the proceedings and order of the circuit court of Florida for Jefferson county in a certain cause wherein James M. Groover, Everette P. Groover, Thomas J. McIntosh—in right of his wife, Sallie E. McIntosh—Sallie E. McIntosh in her own right, Charles A. McIntosh—in right of his wife, Georgia C. McIntosh—Georgia C. McIntosh in her own right, Annie E. Groover and Charles A. Groover, and M. Alice Groover, infants, by James M. Groover, their next friend, were plaintiffs, and Andrew J. Coffee and all persons in possession of the lands described in the memorandum attached, and all persons claiming the same adversely, or entitled to defend the possession of the property claimed, were defendants; and of the writ of error therein to the judgment of the circuit court therein rendered, which said transcript of the record of the cause aforesaid, and subsequent proceedings to judgment, and writ of error thereto, is in the words and figures as follows, to wit:

Pleas in the Circuit Court of the State of Florida for the 2d Judicial Circuit, in and for the County of Jefferson, in a certain cause therein, wherein James M. Groover *et al.* are plaintiffs, and
2 Andrew J. Coffee is defendant.

Be it remembered, that on the 19th day of March, in the year of our Lord one thousand eight hundred and eighty, came James M. Groover *et al.*, plaintiffs in the case aforesaid, by their attorneys, C. W. Stevens and Pasco & Palmer, and filed in the clerk's office of the circuit court of the 3d judicial circuit in and for Madison county, Florida, his præcipe for a summons *ad respondendum*, in the words and figures following, to wit:

STATE OF FLORIDA, *Madison County:*

In the 3d Judicial Circuit of Florida in and for Madison County. Returnable to April Rules.

JAMES M. GROOVER, EVERETTE P. GROOVER, THOMAS J. McIntosh in right of his wife Sallie E. McIntosh, Sallie E. McIntosh in her own right; Charles A. McIntosh in right of his wife Georgia C. McIntosh, and Georgia C. McIntosh in her own right; Annie E. Groover and Charles A. Groover and M. Alice Groover, infants, by James M. Groover, their next friend, Plaintiffs,	Ejectment.
vs.	
ANDREW J. COFFEE and all persons in possession of the lands described in the memorandum hereto attached, and to all persons claiming the same
3 adversely, or entitled to defend the possession of the said property claimed, Defendants.	

The clerk of the circuit court in and for Madison county and said

State will please issue summons *ad respondendum* to the defendants in the above-entitled cause to answer plaintiffs in an action of ejectment, and for mesne profits in the sum of one thousand dollars, and oblige—

C. W. STEVENS,
PASCO & PALMER,
Att'ys for Plaintiffs.

To JNO. M. BEGGS, Esq.,
Cl'k C't C't in and for Madison County
and State of Florida, M'ch 18th, 1880.

The following described lands are claimed by plaintiffs in the above-entitled cause, to wit: About seventy-seven acres in fractional lot number 200, in originally Irwin county, Georgia, and about twenty acres in fractional lot number (199) one hundred and ninety-nine, in the S. E. corner of said lot, in originally Irwin county, Georgia, now in Madison county, Florida, said lots being more particularly described as ninety-seven acres in northern part of fractional section (29) twenty-nine, township (3) three north, of range (9) nine east.

C. W. STEVENS,
PASCO & PALMER,
Att'ys for Plaintiffs.

4 Which said præcipe and memorandum bears the following endorsements:

No. 252. In Madison circuit court. James M. Groover *et al. vs.* A. J. Coffee. Ejectment. Præcipe & mem. Filed in office this 19th day of M'ch, A. D. 1880. Jno. M. Beggs, cl'k. Stevens, Pasco & P., att'ys for pl't'ffs. Jeff. circuit court. Filed M'ch 1st, 1881. W. C. Bird, cl'k, per D. L. Oakly, D. C. Filed 6 M'ch, 1882. W. C. Bird, clerk.

Whereupon a summons *ad respondendum* issued from the clerk's office aforesaid, which, with the return and endorsements thereon, is in the words and figures following:

The State of Florida to the Sheriff of Madison county, Greeting:

5 You are hereby commanded to summon Andrew J. Coffee and all persons in possession of the lands described in the memorandum hereto attached, and all persons claiming the same adversely, or entitled to defend the possession of the said property claimed, if they be found in your county, to be and appear before the judge of our circuit court for the county of Madison, State of Florida, at the court-house at Madison, on the first Monday of April next, being a rule day of our said court, then and there to answer James M. Groover, Everette P. Groover, Thomas J. McIntosh in right of his wife Sallie E. McIntosh, and Sallie E. McIntosh in her own right; Charles A. McIntosh in right of his wife Georgia C. McIntosh, and Georgia C. McIntosh in her own right; Annie E. Groover and Charles A. Groover and Mary Alice Groover, infants,

by their next friend, James M. Groover, in an action of ejectment, and for mesne profits, in the sum of one thousand dollars, and have then and there this writ.

Witness, Jno. M. Beggs, clerk of said circuit court for the county of Madison, and the seal of said court, at Madison aforesaid, this 19th day of March, A. D. 1880.

JNO. M. BEGGS,
Clerk of the Ct. Court for Madison County.

C. W. STEVENS, PASCO & PALMER,
Att'ys for Plaintiffs.

6 *Memorandum.*

The following-described lands are claimed by the plaintiffs in the above-entitled cause, to wit, about twenty-seven acres in fractional lot number 200, in originally Irwin county, Georgia, and about twenty acres in fractional lot number one hundred and ninety-nine, (199,) in S. E. corner of said lot, in originally Irwin county, Georgia, now in Madison county, Florida, said land being more particularly described as ninety-seven acres, in the northern part of fractional section twenty-nine, (29,) township three (3) north, of range nine (9) east.

JNO. M. BEGGS, *Clerk.*

Which said summons bears the following endorsements in words and figures:

No. 252. In Madison county 3d judicial circuit. James M. Groover *et al. vs.* Andrew J. Coffee. Summons *ad respondendum* issued and filed this 19th day of March, A. D. 1880. Jno. M. Beggs, clerk. Original filed in Jeff. circuit court, Mch. 1st, 1881.
7 W. C. Baird, clk., per D. L. Oakly, D. C. C. W. Stevens, Pasco & Palmer, plff's att'ys. Came to hand this the 19th day of March, A. D. 1880. Theodore H. Williard, sheriff Madison county.

Executed the within by serving a true and correct copy of the within, at the residence of Andrew J. Coffee, with a member of his family over 15 years of age, at the same time exhibiting the original, and explaining the contents herein, this the 26th day of March, A. D. 1880.

T. H. WILLARD,
Sheriff Madison County.

Filed 6 Mch., 1882.

W. C. BIRD, *Clerk.*

And afterwards, to wit, on the 5th day of April, in the year of our Lord one thousand eight hundred and eighty, the plaintiffs by their attorneys filed in the clerk's office aforesaid their declaration, in the words and figures following, to wit:

STATE OF FLORIDA, *Madison County:*

In the Third Judicial Circuit of Florida in and for Madison County.
April Rules.

JAMES M. GROOVER, EVERETTE P. GROOVER, THOMAS J. McINTOSH in right of his wife Sallie E. McIntosh, and Sallie E. McIntosh in her own right; Charles A. McIntosh in right of his wife Georgia C. McIntosh, and Georgia C. McIntosh in her own right; Annie E. Groover and Charles A. Groover, and M. Alice Groover, infants, by James M. Groover, their next friend, Plaintiffs,

vs.

ANDREW J. COFFEE, and all persons in possession of the lands described in the memorandum attached to the præcipe, and all persons claiming the same adversely, or entitled to defend the possession of the said property claimed, Defendants.

Ejectment. Mesne profits, $1,000.00.

James M. Groover, Everette P. Groover, Thomas J. McIntosh in right of his wife Sallie E. McIntosh, and Sallie E. McIntosh in her own right; Charles A. McIntosh in right of his wife Georgia C. McIntosh, and Georgia C. McIntosh in her own right; Annie E. Groover and Charles A. Groover and M. Alice Groover, infants, by their next friend, James M. Groover, by their attorneys, C. W. Stevens and Pasco & Palmer, complain of Andrew J. Coffee and all persons claiming the lands hereinafter described, who have been summoned to answer them in an action of ejectment, for that whereas the defendant is in possession of a certain tract or parcel of land lying and being in the county and State aforesaid, known and described as follows, to wit: About seventy-seven acres in fractional lot number 200, in originally Irwin county, Georgia, and about twenty acres in fractional lot number (199) one hundred
9 and ninety-nine, in the southeast corner of said lot, in originally Irwin county, Georgia, both now in Madison county, Fla., said lots being more particularly described as ninety-seven acres in the northern part of fractional section (29) twenty-nine, township (3) three north, of range (9) east, to which the plaintiffs claim title; and the defendant has received the profits from said lands for four years, of yearly value of two hundred and fifty dollars, and refuses to deliver the possession of said land to the plaintiffs, or to pay them the profits thereof; and the plaintiffs claim the possession of the said lands, and one thousand dollars for mesne profits.

C. W. STEVENS,
PASCO & PALMER,
Attorneys for Plaintiffs.

Which said declaration bears the endorsements following, to wit:

No. 252. In Madison circuit court. James M. Groover *et al. vs.*

Andrew J. Coffee. Ejectment. Mesne profits, $1,000.00. Declaration. Filed in office this 5th April, A. D. 1880. Jno. M. Beggs, cl'k. Stevens, Pasco & P., att'ys for plaintiffs. Filed in Jefferson circuit court, M'ch 1st, 1881. W. C. Bird, cl'k, per D. L. Oakley, D. C. Filed 6 M'ch, 1882. W. C. Bird, clerk.

And afterwards, to wit: On the 16th day of December, A. D. 1880, the following motion to amend declaration was filed in the clerk's office by plaintiff's attorneys, which is in the words and figures following:

JAMES M. GROOVER *et al.*
vs.
ANDREW J. COFFEE, and all persons in possession, &c. } Ejectment.

And now come the plaintiffs in open court, by C. W. Stevens and Pasco & Palmer, their attorneys, and move to amend the memorandum attached to the præcipe, and the memorandum attached to the writ, and also to amend the declaration, so as to make the description of the land more complete and accurate, by adding to the description already given, and directly thereafter, the following words: Lying between and bounded by the lines formerly and at different times claimed as the boundary lines between the States of Georgia and Florida, commonly known as the McNeil or McNeal line, and the Watson line, and extending across the said section twenty-nine, from east to west.

C. W. STEVENS,
PASCO & PALMER,
Plff's Atty's.

This motion is granted.

D. S. WALKER, *Judge.*

Dec. 16, 1880.

Which said motion bears the following endorsements, in words and figures following:

No. 252. Groover *vs.* Coffee. Filed Dec. 16, 1880. W. B. Lamar, clerk. Filed 6 M'ch, 1882. W. C. Bird, clerk.

And afterwards, to wit: On the 3d day of May, in the year of our Lord one thousand eight hundred and eighty, the said defendant, by his attorneys, filed in the clerk's office aforesaid, his plea, in the words and figures following:

In the Circuit Court, 3d Judicial Circuit of the State of Florida, for Madison County.

JAMES M. GROOVER and others
vs.
ANDREW J. COFFEE. } Ejectment.

Andrew J. Coffee, the defendant, by A. & F. P. Paterson, his attorneys, says that he is not guilty.

And for a second plead defendant says that the alleged cause of action did not accrue within seven years before this suit.

12 And for a third plea defendant says that the alleged cause of action did not accrue within seven years before the death of — Groover, the ancestor under whom the plaintiffs claim title.

And for a fourth plea defendant says that the plaintiffs ought not to have or maintain the aforesaid action against this defendant, because he says that in an action in which this defendant and Mary J. Groover, widow of Charles C. Groover, and as executrix of the estate of the said Charles C. Groover, were parties, which was pending in the above-mentioned court, and was transferred at the instance of the said Mary J. Groover to the circuit court of the United States for the northern district of Florida, at Tallahassee, in which the title to said lands was involved; and the verdict and judgment in said circuit court of the United States was made and rendered in favor of this defendant.

A. & F. P. PATERSON,
Att'ys for Defendant A. J. Coffee.

May 1st, 1880.

STATE OF FLORIDA, *Madison County:*

Before me personally came Andrew J. Coffee, who, being duly sworn, says that the foregoing pleas are true in substance and matter of fact.

A. J. COFFEE.

Sworn to and subscribed before me, the 3 day of May, 1880.
JNO. M. BEGGS,
Clerk Circuit Court Madison County.

13 Which said pleas bear the endorsements in words and figures following, to wit:

No. 252. In Madison circuit court. Andrew J. Coffee *ads.* James M. Groover *et al.* Ejectment. Pleas. Filed in office the 3rd day of May, A. D. 1880. Jno. M. Beggs, clerk. Filed in Jeff. circuit court, M'ch 1st, 1881. W. C. Bird, clerk, per D. L. Oakly, D. C. A. & F. P. Paterson. Filed 6 M'ch, 1882. W. C. Bird, clerk. 2nd and 3rd & 4 pleas withdrawn. A. Paterson, att'y for def't.

And afterwards, to wit, on the 8th day of March, in the year of our Lord one thousand eight hundred and eighty-one, the said defendant, by his attorney, filed in the clerk's office aforesaid his further plea, in the words and figures following:

In the Circuit Court 2nd Judicial Circuit of the State of Florida for Jefferson County.

Transferred from Madison County, in the 3d Judicial Circuit.

JAMES M. GROOVER, EVERETTE P. GROOVER, THOMAS M. McINTOSH in right of his wife Sallie E.
14 McIntosh, and Sallie E. McIntosh in her own right; Charles A. McIntosh in right of his wife Georgia C. McIntosh, and Georgia C. McIntosh in her own right; Annie E. Groover and Charles A. Groover and M. Alice Groover, infants, by James M. Groover, their next friend,
vs.
ANDREW J. COFFEE and all persons claiming, &c.
} Ejectment.

The said defendant, Andrew J. Coffee, by his attorney, comes and says that this court ought not to take or have further cognizance of the action aforesaid, because he says that the said supposed causes of action, and each and every of them, (if any such accrued to the said plaintiffs), accrued to the said plaintiffs out of the jurisdiction of this court, that is to say—at Tallahassee, in the county of Leon, in the circuit court of the United States for the northern district of Florida; and not in the circuit court of the second judicial circuit of Florida for Jefferson county, or elsewhere within the jurisdiction of the State courts of the State of Florida—because he says that heretofore, to wit: On the — day, of ———, A. D. 1875, the said defendant had a suit pending in the circuit court for the third judicial circuit of Florida for Madison county, in which Mary J. Groover, in her own right, and as executrix of Charles Groover, deceased,
15 was defendant, involving the question of title to the land in controversy in this suit, to wit: ninety-seven acres in the northern part of fractional section twenty-nine (29), in township three (3) north, of range nine (9) east; and at the fall term of said circuit court, A. D. 1875, the said Mary J. Groover, as executrix, &c., filed her petition in the said circuit court for a transfer of said cause to the circuit court of the United States for the northern district of Florida, at Tallahassee; and that said cause of action was transferred to the United States circuit court at Tallahassee, as aforesaid; and the said cause was tried by the said United States circuit court at Tallahassee, the question involved therein being the title held by two States, and the verdict and judgment was in favor of the said defendant and against the said Mary J. Groover, &c. That the plaintiffs in this action are the heirs-at-law of the said Charles Groover, deceased, upon whose estate the said Mary J. Groover is executrix; and the same question is involved in this suit, which was tried and determined in the United States circuit court as aforesaid, all this the said defendant is ready to verify, wherefore he prays judgment whether this court can or will take further cognizance of the action aforesaid.

ANGUS PATERSON,
Att'y for Def't Andrew J Coffee.

March 8th, 1881.

JEFFERSON COUNTY, *ss:*

Before me personally came Andrew J. Coffee, who being duly sworn, says that the foregoing plea is true in substance and fact.

16 A. J. COFFEE.

Sworn to and subscribed before me, this 8th day of March, A. D. 1881.

W. C. BIRD,
Clerk Jeff. C't C't.
Per D. L. OAKLY,
Dep'y Clk.

Which said plea bears the endorsements in the words and figures following:

In the circuit court 2nd judicial circuit of Florida, Jefferson county. Andrew J. Coffee *als.* James M. Groover *et al.* Ejectment. Pleas to jurisdiction. Filed in office this the 8th day of March, A. D. 1881. W. C. Bird, clerk, per D. L. Oakley, D. C. Filed 6 M'ch. 1882. W. C. Bird, clerk. A. Paterson, att'y for def't.

And afterwards, to wit, on the 6th day of March, in the year of our Lord one thousand eight hundred and eighty-two, a certified copy of an order of transfer was filed in the clerk's office aforesaid, in words and figures following:

In Circuit Court 3rd Circuit of Florida, Madison County.

JAMES M. GROOVER *et al.*
vs.
A. J. COFFEE. } Ejectment.

17 This cause coming on to be heard, upon the motion of the plaintiffs to transfer the same, and it appearing that I am disqualified to act by reason of having been retained as counsel in said cause, it is therefore ordered, adjudged, and decreed that the said cause of James M. Groover *et al. vs.* A. J. Coffee *et al.*—ejectment—be and the same is hereby transferred to the circuit court of Jefferson county, at Monticello, in the second judicial circuit of Florida, that being the next nearest circuit, to be heard and determined by the judge of said court.

Done and ordered in vacation.

M'ch 4th, 1882. E. J. VANN, *Judge.*

STATE OF FLORIDA, *Madison County:*

I, John M. Beggs, clerk of the circuit court in and for Madison county, do hereby certify that the foregoing is a true and correct copy of the order in the case of Groover *et al. vs.* Coffee *et al.*—ejectment.

Witness my hand and seal, the 4th day of March, A. D. 1882.

[SEAL.] JNO. M. BEGGS, *Clerk.*

Which said order bears the endorsements in words and figures following:

In circuit court. James M. Groover *et al. vs.* A. J. Coffee.
18 Ejectment. Certified copy of order of transfer. Filed 6 March, 1882. W. C. Bird, clerk.

And afterwards, to wit: on the 7th day of June, in the year of our Lord, one thousand eight hundred and eighty —, the plaintiffs, by their attorneys, filed in the clerk's office of the circuit court aforesaid, replication, in words and figures following:

In Madison Circuit Court, Third Judicial Circuit.

JAMES M. GROOVER *et al.*
vs.
ANDREW J. COFFEE,
} Ejectment. Mesne profits, $1,000.00.

The plaintiffs, by their attorneys, C. W. Stevens & Pasco & Palmer, join issue upon defendant's 1st plea, and thereupon put themselves upon the country.

C. W. STEVENS,
PASCO & PALMER,
Atty's for Plaintiffs.

They move to strike out the 2nd & 3rd pleas, because, (1) they do not show that the issue alleged to have been tried in the U. S. cir'c ct., were between the parties to this action or their privies; because, (2) that the said pleas cover substantially the same ground; because (3) the said pleas are covered by the general issue; because, (4) these plaintiffs were not concluded by a cause to which they were not parties and in which their rights were not represented; and Mary J. Groover, neither in her own right, nor as executrix, nor as administratrix, as stated in the said pleas, had any right
19 to speak for them.

C. W. STEVENS,
S. PASCO,
March 7th, 1882. *Atty's for Plff's.*

Which said replication bears the endorsements in words and figures following:

No. 252. In circuit court, 3rd circuit. James M. Groover *et al. vs.* A. J. Coffee. Replication. Filed in office the 7th day June, A. D. 1880. Jno. M. Beggs, clerk. Filed in Jeff. circuit court, Mch. 1, 1881. W. C. Bird, clerk, per D. L. Oakley, D. C. C. W. Stevens, Pasco & P., att'ys for plff's. Filed 6 Mch. 1882. W. C. Bird, clerk.

This motion is withdrawn as unnecessary, after ruling of court.
P. & P.
C. W. S.

And afterwards, to wit: on the 7th day of March, one thousand

eight hundred and eighty-three, the following order was filed in the clerk's office aforesaid, in words and figures following:

20 GROOVERS vs. A. J. COFFEE. } Ejectment. No. 252.

The death of Annie E. Groover, since the commencement of this action, being suggested upon the record, it is ordered that the action do proceed at the suit of the surviving plaintiffs against the defendant.

Which said order bears the endorsements in words and figures following:

Groover *et al. vs.* A. J. Coffee. Order. Filed M'ch 7, 1883. W. C. Bird, cl'k. Per D. L. Oakley, D. C.

And afterwards, to wit, on the 8th day of March, in the year of our Lord one thousand eight hundred and eighty-two, the plaintiffs, by their attorneys, filed in the clerk's office aforesaid their demurrer to the said pleas, in words and figures following:

JAMES M. GROOVER *et al. vs.* A. J. COFFEE.

And now come the plaintiffs, by their attorneys, C. W. Stevens and S. Pasco, and say that the defendant's second and third pleas are bad in substance. The matter of law intended to be argued is that an heir is not concluded by a judgment against an executor or administrator, administering upon the estate of his, the
21 heir's, ancestor; and that the plaintiffs are not barred of this action by the alleged judgments in ejectment against Mary J. Groover, in her own right, and as executrix of Charles Groover, set up in their plea.

C. W. STEVENS,
S. PASCO,
Pl'ffs' Att'ys.

I certify that in my opinion the within demurrer is well founded in law.

S. PASCO,
March 8, 1882. *Att'y for Pl'ff.*

S. Pasco being duly sworn says that he is one of the plaintiff's attorneys, and that the within demurrer is not interposed for the purpose of delay.

S. PASCO.

Sworn to and subscribed before me, this March 8, 1882.
R. B. WHITFIELD,
Justice of the Peace in and for Jefferson County, Florida.

Which said demurrer bears the endorsements, in words and figures following:

No. 252. Demurrer. Filed 8th March, 1882. W. C. Bird, clerk.

And afterwards, to wit: On the 8th day of March, one thousand eight hundred and eighty-two, the following order was filed in the clerk's office aforesaid, in words and figures following:

JAS. GROOVER *et al. vs.* A. J. COFFEE.

22 This action came on this day to be heard upon the motion to strike out the defendant's second and third pleas, setting up as a bar to this action a judgment in favor of the defendant herein, A. J. Coffee, against Mary J. Groover, as executrix of the last will and testament of Charles Groover, and was argued by counsel for the respective parties. And the court, upon consideration, denied the motion to strike out the said pleas, but gave leave to the plaintiffs to urge the same matters of defence by demurrer. And the plaintiffs thereupon demurred to the said second and third pleas of the defendant, and the matters of law being argued and considered, it is adjudged by the court that the said pleas are not sufficient in law, and the same are overruled. And the defendant thereupon excepted to the said order of the court sustaining the plaintiffs' demurrer to the said second and third pleas; which exception is hereby noted and made a part of the record of the action.

Which said order bears the endorsements in words and figures following:

James M. Groover *et al. vs.* A. J. Coffee. Order. Filed March 8, 1882. W. C. Bird, clerk, per D. L. Oakley, D. C.

23 And the attention of the court having been called to the mandate of the supreme court of Florida, the following order was thereupon made:

JAMES M. GROOVER *et al.*
vs.
ANDREW J. COFFEE, } Ejectment.

The mandate of the supreme court in this action having been filed in the clerk's office, since the last term of the court, and now being called to the attention of the court, and the supreme court having remanded this action to this court with directions to award a new trial, it is ordered that a new trial be awarded accordingly.

And afterwards, to wit: On the 8th day of March, in the year of our Lord one thousand eight hundred and eighty-three, at a term of the circuit court of the second judicial circuit, in and for Jefferson county, held at the town of Monticello, came the said plaintiffs and the said defendant, by their respective attorneys, and thereupon came a jury, to wit: J. T. Porter, E. P. Barrington, Bryant Kinsey, J. M. Henry, T. S. Johnson, and J. D. Freeman; who being duly elected, tried and sworn, the truth to speak upon the issues joined; having heard the evidence, the charge of the court, and the arguments of counsel, and having considered of their verdict, upon their oaths do say:

We the jury find for the plaintiffs, and find that they are entitled to recover the interest claimed by them in the land in controversy, to wit: Forty-eight forty-ninths ($\frac{48}{49}$) of about 77 acres in fractional

lot two hundred, in originally Irwin county, Georgia, and in
24 about twenty acres in fractional lot one hundred and ninety-nine, in the southeast corner of said lot, in originally Irwin county, Georgia, all now in Madison county, Florida; said lots being more particularly described as about ninety-seven acres in the northern part of fractional section 29, T. 3 N., R. 9. E., lying between the lines formerly and at different times claimed as the boundary lines between the States of Georgia and Florida, commonly known as the McNeil and the Watson lines, and extending across said section 29 from east to west, bounded on the north by the said McNeil line, south by the Watson line, east by the eastern boundary of said fractional lot twenty-nine, and west by the western boundary of said section—and the jury assess the plaintiffs' damages at five hundred dollars.

JOHN M. HENRY, *Foreman.*

Which said verdict bears the endorsements, in words and figures following:

Groover *et al. vs.* Coffee. Verdict. Filed March 8, 1883. W. C. Bird, clerk, per D. L. Oakley, D. C.

Upon the rendition of which said verdict the said defendant, by his attorneys, entered a motion for a new trial, in the words and figures following, to wit:

25 In the Circuit Court, 2nd Judicial Circuit of Florida, for Jefferson County.

Transferred from Madison county.

JAMES M. GROOVER *et al.*
vs.
ANDREW J. COFFEE. } Ejectment.

Plaintiffs and their attorneys will take notice that we will move the court for a new trial in the above stated cause, as soon as counsel can be heard, upon the following grounds, to wit:

1st. Because the verdict of the jury is contrary to law.

2nd. Because the verdict of the jury is contrary to the evidence.

3d. Because the verdict of the jury is contrary to the weight of the evidence.

4th. Because there is no evidence to support the jury in finding $\frac{48}{49}$ of the land in controversy; the plaintiffs by their declaration claimed all the land—the whole estate, and the evidence was for all the land; there was no evidence of $\frac{48}{49}$ or of any other part, but only the statements of counsel in argument to the jury.

5th. Because at the suggestion of the death of one of the plaintiffs, and on the revival of the suit, it was revived for the whole and not for a part of the land, and all the evidence was upon the whole and not a part.

6th. Because when the jury came into court their verdict was for the plaintiffs and $500 for mesne profits, which, when counsel for

the plaintiffs put the verdict in form, he put $\frac{48}{49}$ instead of the whole, but did not divide the $500.00.

26 7th. Because when the jury came into court to render their verdict, and had it in writing, but informal, there was nothing said about a fractional part, and no evidence as such $\frac{48}{49}$.

8. Because the jury ignored the patent issued by *by* the United States Government, and the perfect chain of titles to the defendant to the land in controversy.

9. Because the jury assumed that the grants to lots 199 and 200, in originally Irwin county, Georgia, embraced the lands in Madison county, Florida, to which defendant showed title from the United States, when there was no evidence to support such assumption, but there was evidence to the contrary.

10. Because the jury based their verdict upon the grants issued by the State of Georgia, and an imperfect chain of title to the plaintiffs, or no chain at all.

11. Because even if the Georgia grants did include the land in controversy, the land is proved to be in Florida, and to have belonged to the United States, and Georgia had no right to convey Florida territory.

12. Because even if the Georgia grants did include the land in controversy, there is no evidence to connect the plaintiffs with the Georgia grants; the deeds produced not even showing in what State the land therein described was or is situated.

13. Because the verdict of the jury is based upon the assumption that there is a Watson line between the States of Georgia and Florida, when there is no evidence showing that any authority for such a line exists, or ever has existed; there is no evidence to show that that line was run by Georgia, Florida, or the General

27 Government; and so far as the evidence is concerned, the Watson line is a myth.

14. Because the evidence shows, and it is admitted, that the land in controversy is not only south of the Whitner and Orr line, the established line between the two States, but also south of the McNeil line.

ANGUS PATERSON,
THOMAS L. CLARKE,
Att'ys for Def'ts.

Which said motion being considered by the court, an order overruling and denying said motion, in the words and figures following, was made:

Motion for a New Trial.

JAMES M. GROOVER *et al.*
vs.
ANDREW J. COFFEE. } Ejectment.

And now comes the defendant, Andrew J. Coffee, and moves for a new trial upon the grounds set forth on the motion docket; and the plaintiffs having due notice of the same, and said motion having been submitted without argument, it is considered and ordered that

said motion be, and the same is hereby, overruled and denied: whereupon said defendant excepted to said ruling and order, which exception is hereby noted as a part of the record in this cause. And the defendant having taken his appeal from the final judgment rendered herein, to the next term of the supreme court of Florida upon his motion, the plaintiffs being present by their attorney, S. Pasco, and making no objection thereto, it is ordered by the court
28 that the defendant be allowed sixty days from the adjournment of the court, to prepare and submit his bill of exceptions in this cause.

Whereupon judgment upon the said verdict was entered by the court, in the words and figures following, to wit:

Whereupon it is considered by the court that the plaintiffs, James M. Groover, Everette P. Groover, Thomas J. McIntosh in right of his wife Sallie E. McIntosh, and the said Sallie E. McIntosh in her own right; Charles A. McIntosh in right of his wife Georgia C. McIntosh, and said Georgia C. McIntosh in her own right; Charles A. Groover and M. Alice Groover, have an undivided estate and title in and to the lands described in said verdict, to wit: Forty-eight forty-ninths ($\frac{48}{49}$) of about 77 acres in fractional lot two hundred, in originally Irwin county, Georgia, and in about twenty acres in fractional lot one hundred and ninety-nine, in the southeast corner of said lot, in originally Irwin county, Georgia, all now in Madison county, Florida; said lots being more particularly described as about ninety-seven acres in the northern part of fractional section 29, T. 3 N., R. 9 E., lying between the lines formerly and at different times claimed as the boundary lines between the States of Georgia and Florida, commonly known as the McNeil and Watson lines, and extending across said section twenty-nine from east to west; bounded on the north by the said McNeil line, south
29 by the Watson line, east by the eastern boundary line of said fractional lot twenty-nine, and west by the western boundary of said section; and that they do recover possession thereof from the defendant, Andrew J. Coffee. It is furthered considered that the said plaintiffs do recover of the said defendant five hundred dollars for their damages, assessed as aforesaid, and fifty-seven and $\frac{66}{100}$ dollars for their costs by them in this behalf expended. And the defendants in mercy, &c.

And after the expiration of said term, to wit: On the 4th day of May, in the year of our Lord one thousand eight hundred and eighty-three, by virtue of a special order to that effect made, the said defendant made up and tendered his bill of exceptions; which were settled and signed by the judge, and ordered to be made a part of the record—which said bill of exceptions, is in the words and figures following, to wit:

In the Circuit Court of the Second Judicial Circuit of Florida, in and for the County of Jefferson. Spring Term, A. D. 1883.

Be it remembered, that at a term of the circuit court of the second judicial circuit of the State of Florida, for the county of Jefferson, held at the court-house in Monticello, in said county, on the fifth

day of March, A. D. 1883, and continued from day to day, until the tenth day of said month,—a cause therein pending, wherein
30 James M. Groover, Everette P. Groover, Thomas J. McIntosh in right of his wife Sallie E. McIntosh, and Sallie E. McIntosh in her own right; Charles A. McIntosh in right of his wife Georgia C. McIntosh, and Georgia C. McIntosh in her own right; and Annie E. Groover, Charles A. Groover, and M. Alice Groover, the three last named infants, appearing by James M. Groover, their next friend, were plaintiffs, and Andrew J. Coffee was defendant, came on to be heard, on the 8th day of said month, before the Honorable David S. Walker, judge of said circuit court; at which time came the parties aforesaid, by their respective attorneys; and this cause having been heretofore tried in this court, and a verdict and judgment were in favor of the defendant; and from which judgment the plaintiffs appealed to the supreme court of the State of Florida, and the said supreme court reversed the said judgment and sent its mandate to this court, which was in words and figures as follows, to wit:

Mandate from Supreme Court, State of Florida.

To the honorable the judge of the circuit court for the second circuit of Florida, Greeting:

Whereas lately, in the circuit court of the second judicial circuit of Florida, in and for the county of Jefferson, in a cause wherein James M. Groover *et als.* were plaintiffs, and Andrew J. Coffee was defendant, the judgment of said circuit court was rendered on
31 the eleventh day of March, A. D. 1882, as by inspection of the transcript of the record of the said circuit court, which was brought into the supreme court of the State of Florida, by virtue of an appeal, agreeably to the laws of said State, in such case made and provided, fully and at large appears. And whereas, at the June term of said supreme court, holden at Tallahassee, A. D. 1882, the said cause came on to be heard before the supreme court, on the said transcript of the record, and was argued by counsel; in consideration whereof it was considered by the said supreme court that the said judgment of the circuit court is reversed and set aside, and the cause is remanded to the circuit court with directions to award a new trial, and that the appellants do recover of the appellee their costs by them in this behalf expended, which costs amount to the sum of thirty-two dollars and sixteen cents. Therefore, you are hereby commanded that such further proceedings be had in said cause as according to right, justice, the judgment of said supreme court, and the laws of the State of Florida ought to be had, the said judgment of the circuit court notwithstanding.

Witness the Honorable Edwin M. Randall, chief justice of said supreme court, at Tallahassee, this eighteenth day of January, A. D. 1883.

[SEAL.] CHAS. H. FOSTER, *Clerk Supreme Court.*

32 Costs of appeal, record..... $19 40
Fees of clerk supreme court .. 12 76

$32 16

Which said mandate bears the following endorsement in words and figures following:

No. 252. C't c't. J. M. Groover *et al. vs.* A. J. Coffee. Filed Jan. 20th, 1883. W. C. Bird, clerk Jeff. c't c't.

And thereupon the plaintiffs suggested the death of Annie E. Groover, one of the plaintiffs, and asked that the suit be continued in the name of the other plaintiffs; to which the defendant objected on the ground that another suit might be prosecuted in the name of the personal representative of said deceased, and that the rights of the deceased did not survive to the other plaintiffs; but the court overruled the objection, and ordered that the action proceed at the suit of the surviving plaintiffs against the defendant; to which ruling and order of the court the defendant by his attorneys did then and there except; and thereupon the defendant by his attorneys, made the following motion, to wit: "The plaintiffs and their counsel in the above stated cause will take notice, that on the opening of the court, or as soon thereafter as counsel can be heard, we will
33 move the court to dismiss the said cause upon the following grounds, to wit:

1. Because the said cause was begun in the circuit court in Madison county, and by that court transferred to the Un'ted States circuit court for the northern district of Florida.

2. Because in the title to the land in controversy the boundary of two States is involved, and the United States court has jurisdiction.

3. Because the facts involved in this cause are *res judicata* by the judgment of the United States circuit court for the northern district of Florida, at Tallahassee.

4. Because the United States circuit court, to which the cause was transferred, has jurisdiction of this cause.

5. And for other causes.

After argument had upon said motion, the court made the following order, to wit: "This motion is overruled, and leave granted to file pleas to the jurisdiction of this court." To which ruling and order the defendant by his attorneys did then and there except. And thereupon the defendant by his attorneys filed pleas, which are in words and figures following, to wit:

In the Circuit Court, 2nd Judicial Circuit of the State of Florida for Jefferson County.

Transferred from Madison County, in the 3d Judicial Circuit.

JAMES M. GROOVER, EVERETTE P. GROOVER, THOMAS M. McIntosh in right of his wife Sallie E. McIntosh, and Sallie E. McIntosh in her own
34 right; Charles A. McIntosh in right of his wife Georgia E. McIntosh, and Georgia E. McIntosh in her own right; Annie E. Groover and Charles A. Groover and M. Alice Groover, infants, by James M. Groover, their next friend,
vs.
ANDREW J. COFFEE and all persons claiming, &c. } Ejectment.

The said defendant, Andrew J. Coffee, by his attorney, comes and

says that this court ought not to take or have further cognizance of the action aforesaid, because he says that the said causes of action, and each and every of them, if any such accrued to the plaintiffs, accrued to the said plaintiffs out of the jurisdiction of this court, that is to say, at Tallahassee, in the county of Leon, in the circuit court of the United States for the northern district of Florida, and not in the circuit court of the second judicial circuit of Florida for Jefferson county, or elsewhere, within the jurisdiction of the State courts of the State of Florida, because he says that heretofore, to wit, on the —— day of ——, A. D. 1875, the said defendant had a suit pending in the circuit court for the third judicial circuit of Florida for Madisen county, in which Mary J. Groover, in her own right, and as executrix of Charles Groover, deceased, was defendant, involving the question of title to the land in controversy in this suit, to wit,
35 ninety-seven acres in the northern part of fractional section twenty-nine (29), in township three (3) north, of range nine (9) east; and at the fall term of said circuit court, A. D. 1875, the said Mary J. Groover, as executrix, &c., filed her petition in the said circuit court for a transfer of said cause to the circuit court of the United States for the northern district of Florida, at Tallahassee, and that said cause of action was transferred to the United States circuit court, at Tallahassee, as aforesaid; and the said cause was tried by the said United States circuit court, at Tallahassee, the question involved therein being the titles held by two States; and the verdict and judgment was in favor of the said defendant and against the said Mary J. Groover, &c.; that the plaintiffs in this action are their heirs-at-law of the said Charles Groover, deceased, upon whose estate the said Mary J. Groover is executrix, and the same question is involved in this suit which was tried and determined in the United States circuit court as aforesaid. All this the said defendant is ready to verify; wherefore he prays judgment whether this court can or will take further cognizance of the action aforesaid.

ANGUS PATERSON,
Att'y for Def't, Andrew J. Coffee.

March 8, 1881.

JEFFERSON COUNTY, *ss:*

Before me personally came Andrew J. Coffee, who, being
36 duly sworn, says that the foregoing plea is true in substance and fact.

A. J. COFFEE.

Sworn to and subscribed before me, this 8th day of March, A. D. 1881.

W. C. BIRD,
Clerk Jeff. C't C't.
Per D. L. OAKLEY,
Dep'ty Clk.

And thereupon the plaintiffs made the following motion, to wit:

The plaintiffs move to strike out the plea, this day filed as a plea to the jurisdiction of the court, upon the following grounds:

1. The said plea is not a plea to the jurisdiction of the court, and the defendant only had leave to file such a plea.

2. The said plea sets up substantially the same defense as is made in the former fourth plea, which has not been withdrawn.

3. The said plea is in contradiction of certain matters set up in a former plea, and it is impossible for both to be true.

And thereupon the following proceedings were had, to wit: The fourth plea being withdrawn, the second and third grounds of the last-named motion were withdrawn, and the said motion was then overruled by the court, and the plaintiffs then filed their demurrer to defendants' plea to the jurisdiction, which demurrer is in words and figures as follows, to wit:

JAS. M. GROOVER *et al. vs.* A. J. COFFEE.

37 And now come the plaintiffs, by their attorneys, C. W. Stevens and S. Pasco, and say that the defendants' second and third pleas are bad in substance. The matter of law intended to be argued is that an heir is not concluded by a judgment against an executor or administrator administering upon the estate of his, the heir's, ancestor; and that plaintiffs are not barred of this action by the alleged judgments in ejectment against Mary J. Groover in her own right and as executrix of Charles Groover, set up in their plea.

C. W. STEVENS,
S. PASCO,
Pl'ff's Att'ys.

I certify that in my opinion the within demurrer is well founded in law.

S. PASCO,
March 8, 1882. *Att'y for Pl'ff.*

S. Pasco, being duly sworn, says that he is one of the plaintiff's attorneys, and that the within demurrer is is not interposed for the purpose of delay.

S. PASCO.

Sworn to and subscribed before me, this March 8, 1882.
R. B. WHITFIELD,
Justice of the Peace in & for Jefferson County, Florida.

Which said demurrer bears the endorsements, in words and figures following:

252. Demurrer. Filed 8th March, 1882. W. C. Bird, clerk.

And thereupon, to sustain his said plea to the jurisdiction, said defendant offered a certified copy of the will of Charles A. Groover, which is as follows, to wit:

38 *Will of Charles A. Groover.*

GEORGIA, *Brooks County:*

In the name of God, amen. I, Charles A. Groover, of said State

and county, being in feeble health, but of sound and disposing mind and memory, I do therefore make this my last will and testament, revoking all former wills by me made:

Item 1st. I desire and direct that my body be buried in a decent and Christian-like manner.

Item 2d. I desire and direct that all my just debts be paid as early [as] possible by my executrix and executor hereinafter named and appointed.

Item 3d. I desire and direct that my entire estate be kept together as one common stock for the support and education of my wife and children until the youngest one becomes of age or marries, and then to be equally divided among them, to wit: My wife, Mary J. Groover, James M. Groover, Everette Groover, Georgia Groover, Nannie Groover, Joseph T. Groover, Charles A. Groover, and Mary A. Groover, to share and share alike.

Item 4th. I hereby give my executrix and executor hereinafter named full power and authority to sell my lands and purchase other lands, if in their judgment it is for the benefit of my estate or family, and also to sell and purchase stock for the benefit or use of my estate, as may in their judgment seem best for my estate.

39 Item 5th. And further to secure my estate against loss or mismanagement, I desire and direct that my wife and children live on the income and proceeds, and not on the principal, of my estate, only in cases of protracted sickness, as any debt that my executrix and executor may hereafter make shall not be binding—no further than the income of my estate will satisfy.

Item 6th. I hereby constitute and appoint my wife, Mary J. Groover, executrix of this my last will and testament.

CHARLES A. GROOVER.

This Nov. 27th, 1865.

Signed, sealed, declared, and published by Charles A. Groover as his last will and testament in the presence of us, the undersigned, who subscribed our names hereto in the presence of said testator, at his special instance and request, and the presence of each other, this Nov. 27th, 1865.

WILEY W. GROOVER.
J. A. McNAIR.
REDDING J. GROOVER.

Codicil.

STATE OF GEORGIA, *Brooks County:*

I, Charles A. Groover, make this provision to the above will, that in case I have more children born unto me by my wife, Mary J. Groover, that they are to share and share alike with the rest of my children, as specified in Item 3d of the above will.

CHARLES A. GROOVER.

This Nov. 27th, 1865.

Signed, sealed, declared, and published by Charles A. Groover as a codicil to the above will in the presence of us, the under-

signed, who subscribed our names hereto in the presence of said testator, at his special instance and request, and in the presence of each other, this Nov. 27th, 1865.

WILEY W GROOVER.
J. A. McNAIR.
REDDING J. GROOVER.

GEORGIA, *Brooks County:*

ORDINARY OFFICE, *March*, 15th, 1884.

I hereby certify that the within and foregoing copy of the last will and testament of Charles A. Groover, and codicil, is a true copy from the records of this office.

Givin under my hand and official seal of office.

[SEAL.] A. P. PERHAM,
Ordinary, Brooks Co., Ga.

And the said judge did then and there deliver his opinion, and rule out the said certified copy of the will of Charles A. Groover; and defendant, by his attorney, did then and there except. And after argument had upon the said plea to the jurisdiction, and the demurrer thereto, the said judge did then and there deliver his opinion and judgment, which was as follows, to wit:

JAS. GROOVER *et al. vs.* A. J. COFFEE.

This action came on this day to be heard upon the motion to strike out the defendants' second and third pleas, setting up as a bar to this action a judgment in favor of the defendant herein, A. J. Coffee, against Mary J. Groover, as executrix of the last will
41 and testament of Charles Groover, and was argued by counsel for the respective parties; and the court, upon consideration, denied the motion to strike out the said pleas, but gave leave to the plaintiffs to urge the same matters of defense by demurrer; and the plaintiffs thereupon demurred to the said second and third pleas of the defendant, and the matters of law being argued and considered, it is adjudged by the court that the said pleas are not sufficient in law, and the same are overruled; and the defendant thereupon excepted to the said order of the court, sustaining the plaintiffs' demurrer to the said second and third pleas; which exception is hereby noted, and made a part of the record of the action.

Which said order bears the following endorsements in words and figures as follows:

James M. Groover *et al. vs.* A. J. Coffee. Order. Filed March 8, 1882. W. C. Bird, clerk, per D. L. Oakley, D. C.

And thereupon the said issue in manner aforesaid joined between the said parties; and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came, and were sworn to try the said issues in manner aforesaid joined; and thereupon the plaintiffs, to maintain the issues on their part, produced and
42 offered in evidence certain land grant or title from the State of Georgia, with a plat of survey of lot number 199 to

James Groover, and another grant and plat from the State of Georgia of lot number 200, both under the great seal of said State, which are hereto attached, and are marked "A" and "B" respectively, as a part of this bill; and thereupon the defendant, by his attorneys, objected to the introduction of said papers "A" and "B," because they were not connected with the cause, and because they purported to convey land that extended only to the Florida line and within the State of Georgia, and the plaintiffs in this cause claim and seek to recover land lying in the State of Florida.

The plaintiffs, by their attorneys, stated that *that* if they failed to connect the same with the case they would consent to their exclusion hereafter in the progress of the cause. Whereupon the court did then and there decide that the objection ought not to be allowed and that the said writings ought to be admitted in evidence on the part of the plaintiffs, and thereupon permitted the said writings to be read in evidence on the part of the plaintiffs, and the same were read accordingly, as follows:

(A.)

STATE OF GEORGIA:

By his Excellency Charles J. McDonald, governor and commander-in-chief of the army and navy of this State and of the militia thereof:

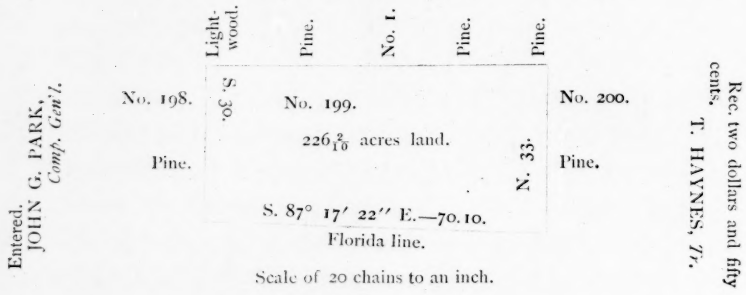
To all to whom these presents shall come, Greeting:

Know ye that in pursuance of the act of the General Assembly, passed the 23rd December, 1822, to dispose of the fractional
43 lots of land in the territory lately acquired from the Creek and Cherokee Indians, I have given and granted, and by these presents, in the name and behalf of this State, do give and grant unto James Groover, his heirs and assigns, forever, all that fraction or lot of land, containing two hundred & twenty-six $\frac{2}{100}$ acres, situate, lying, and being in the fifteenth district of Irwin county, in the said State, which said fraction or lot of land is known and distinguished in the plan of said district by the number one hundred and ninety-nine, having such shape, form, and marks as appear by the plat of the same hereunto annexed; to have and to hold the said fraction or lot of land, together with all and singular the rights, members, and appurtenances thereof whatsoever, unto the said James Groover, his heirs and assigns, to his and their proper use, benefit, and behoof forever, in fee-simple.

Given under my hand and the great seal of the State, this first day of January, in the year of our Lord eighteen hundred and forty-two, and of the 66th year of American Independence.

[SEAL.] CHARLES J. McDONALD.

Magnetic Variation, 5° (*deg.*) 30 *min. east.*



Scale of 20 chains to an inch.

44 STATE OF GEORGIA:

The above plat is a representation of that fractional tract, or lot of land purchased by James Groover, situate in the 15th district, in the county of Irwin, containing two hundred twenty-six & 2/10 acres, which is known and distinguished in the plan of said district, by the number 199. Surveyed on the 2nd day of July, 1820, by Archibald McIntyre, D. S.

ALFRED M. HORTON,
Surveyor General.

WILLIAM MAHON.
JAMES SMITH, *C.C.*

Endorsed: Grant. James Groover, for fractional 199, 15, Irwin. Secretary of State's office, Jan'y 1st, 1842. Registered in Book Fractions H, page 306. J. W. A. Sanford, sec'y. Read in evidence, March 10, A. D. 1882. W. C. Bird, cl'k, per D. L. Oakley, D. C. Signed by his excellency, the Governor, this 1st day of January, 1842. J. N. Horne, S. E. D.

(B.)

STATE OF GEORGIA:

By his excellency, Charles J. McDonald, governor and commander-in-chief of the army and navy of this State, and of the militia thereof:

To all to whom these presents shall come, Greeting:

Know ye, that in pursuance of the act of the General Assembly, passed the 23d December, 1822, to dispose of the fractional lots of land in the territory lately acquired from the Creek and Cherokee Indians, I have given and granted, and by these presents, in the name and behalf of this State, do give and grant unto James
45 Groover, his heirs and assigns, forever, all that fraction or lot of land, containing two hundred and fifty 2/10 acres, situate, lying and being in the fifteenth district of Irwin county, in said State; which said fraction or lot of land is known and distinguished in the place of said district, by the number two hundred, having such shape,

form and marks as appears by the plat of the same hereunto annexed; to have and to hold the said fraction, or lot of land, together with all, and singular the rights, members, and appurtenances thereof whatsoever, unto the said James Groover, his heirs and assigns, to his and their proper use, benefit and behoof forever, in fee-simple.

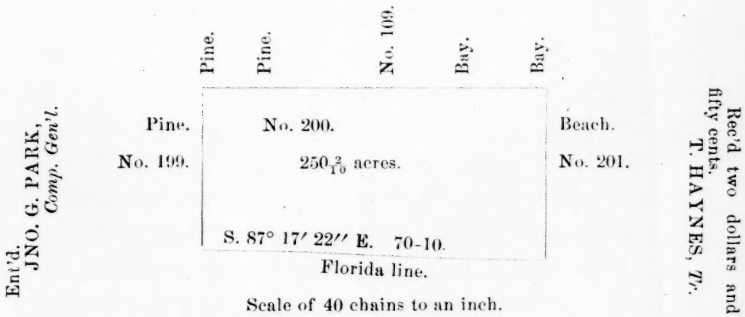
Given under my hand and the great seal of the State, this first day of January, in the year of our Lord, eighteen hundred and forty-two, and of the 66th year of American Independence.

CHARLES J. MCDONALD. [SEAL.]

Signed by his excellency, the Governor, this 1st day of January, 1842.

J. N. HORNE, *S. E. D.*

Magnetic Variation, 5° (*deg.*) 30 *min. east.*



Scale of 40 chains to an inch.

STATE OF GEORGIA:

The above plat is a representation of that fractional tract or lot of land purchased by James Groover, situate in the 15th district, in the county of Irwin, containing two hundred fifty-two and two-tenths acres, which is known and distinguished in the plan of said district by the number 200. Surveyed on the 2nd day of July, 1820, by Archibald McIntyre, D. S.

46

ALFRED M. HORTON,
Surveyor General.

WILLIAM MAHON.
JAMES SMITH, *C.C.*

Endorsed: Grant. To James Groover for fraction 200, 15, Irwin, Secretary of State's Office, Jan'y 1st, 1842. Registered in Book, Fractions H, page 305, J. W. A. Sanford, sec'y.

Read in evidence, March 10, A. D., 1882.

W. C. BIRD, *Clerk.*
Per D. L. OAKLEY, *D. C.*

And to which decission and ruling of said judge the said defendant, by his attorneys, did then and there except.

And the said plaintiffs, by their said attorneys, further to prove the issue in their behalf, produced and offered in evidence a certain title to said lots 199 and 200, from the said James Groover to Thomas A. Groover, bearing date December 31, A. D. 1855, and purporting to have been executed in the presence of John Lee and James D. Redding, as subscribing witnesses, with the certificate of attestation and record, which is thereto attached, and the same is marked "C" as a part of this bill.

And thereupon the defendant, by his attorneys, objected to the introduction and reading of said deed in evidence, upon the ground that the said deed fails to show in what State the land is situated that it purports to convey; and further, that said deed had never been recorded in the State of Florida. And the said judge
47 did then and there deliver his opinion and decide that the objection ought not to be allowed, and that said writing ought to be admitted in evidence on part of the said plaintiffs, when proven by the witnesses properly; and thereupon permitted the said writing to be read in evidence on part of the plaintiffs, and the same was read accordingly as follows, to wit:

"C"

GEORGIA, *Thomas County:*

This indenture, made this the 31st day of December, one thousand eight hundred and fifty-five, between James Groover of the State and county aforesaid of the one part, and Thomas A. Groover of the county of Lowndes, State of Georgia, of the other part, witnesseth: That the said James Groover, for and in consideration of the sum of twelve hundred dollars to him in hand paid at and before the sealing and delivery of their presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed unto the said Thomas A. Groover, his heirs and assigns, all that tract or parcels of land situated, lying, and being in the fifteenth district of originally Irwin, now Lowndes county, known and described as follows: Number two hundred, containing two hundred and fifty acres more or less; also number one hundred and ninety-nine, containing two hundred and twenty-six more or less, with all the rights, members and appurtenances thereunto belonging, to have and to hold the aforesaid described tracts or parcels of land, unto him, the said Thomas A. Groover, his heirs and assigns, together with all the rights, members, and appurtenances to the said tracts or par-
48 cel of land in anywise belonging, to his and their own proper use and benefit and behoof forever, in fee-simple; and the said James Groover, his heirs, executors, and administrators and assigns, will warrant and forever defend the rights and titles thereof against themselves and against the claims of every other person or persons whatsoever.

506. In witness whereof, the said James Groover hath hereunto set his hand and affixed his seal, the day and date above written.

JAMES GROOVER. [SEAL.]

Signed, sealed, and delivered in presence of us—
JOHN LEE.
JAMES D. REDDING.

STATE OF GEORGIA, *Thomas County:*

Personally came before me, James A. Stanaland, justice of the peace in and for said county, James D. Redding, who, after being duly sworn, deposeth and saith that he saw James Groover sign, seal, and deliver the written deed for the purpose therein mentioned, and signed the same himself as a witness, and saw John Lee do likewise.

JAMES D. REDDING.

Sworn to and subscribed before me, this October the 25th, 1856.
JAMES A. STANALAND, *J. P.*

GEORGIA, *Lowndes County:*

CLERK'S OFFICE, SUPERIOR COURT.

Recorded in Book F, page 274, this 2nd January, 1857.
HENRY M. SMITH, *Clk.*

Read in evidence March 10th, A. D. 1882.
W. C. BIRD, *Clerk.*
Per D. L. OAKLY, *D. C.*

Read again in evidence March 11th, 1882.
W. C. BIRD, *Clerk.*
Per D. L. OAKLEY, *D. C.*

To which said opinion and decision the attorneys for said defendant in his behalf did then and there except.

49 And thereupon the plaintiffs, to further prove the issues on their part, produced and offered in evidence a deed of conveyance from Thomas A. Groover to Charles A. Groover, in words and figures as follows, to wit:

"D."

GEORGIA, *Brooks County:*

This indenture, made this the 8th day of July, one thousand eight hundred and sixty, between Thomas A. Groover, of the county and State above written, of the one part, and Charles A. Groover, of the same State and county, of the other part, witnesseth: That the said Thomas A. Groover, for and in consideration of the sum of four thousand three hundred dollars, in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said Charles A. Groover, his heirs and assigns, two lots of land situated, lying, and being in the fifteenth district of originally Irwin, now Brooks county, and known and distinguished as lots number two hundred (200), containing two hundred and fifty acres more or less, and one hundred and ninety-nine (199), containing two hundred and twenty-six acres more or less, together with all and singular the rights,

members, and appurtenances thereunto pertaining or in anywise belonging, to have and to hold the said lots of land for his and their own proper use, benefit, and behalf forever, in fee-simple. And the said Thomas A. Groover, his executors and assigns, unto the said Charles A. Groover, his heirs and assigns, the rights and title to the aforesaid bargained premises will forever warrant and defend
50 against the claim or claims of any and all persons whatsoever.

In testimony whereof, the said Thomas A. Groover has hereunto set his hand and affixed his seal, the day and year above written.

THOMAS A. GROOVER. [L. S.]

Signed, sealed, and delivered in presence of—
J. J. GROOVER.
WM. H. McMURRAY, *J. P.*

STATE OF FLORIDA, *Jefferson County:*

Before the undersigned, a justice of the peace in and for said county, personally came Thomas A. Groover, to me known as the grantor in the foregoing deed, who acknowledged that he signed, sealed, and delivered the foregoing deed, for the uses and purposes therein mentioned, freely and voluntarily.

Witness my hand and seal, this March 8th, A. D. 1882.

B. B. WHITFIELD, [L. S.]
Justice of the Peace.

GEORGIA, *Brooks County:*

Filed in clerk's office superior court Feb. 5, 1873, and recorded in Book C, folio 774, Feb. 6th, 1873.

WILLIAM G. BENTLEY, *Clerk.*

Read in evidence March 10, A. D. 1882.

W. C. BIRD, *Clerk.*
Per D. L. OAKLEY, *D. C.*

Read again in evidence M'ch 11th, A. D. 1882.

W. C. BIRD, *Clerk.*
Per D. L. OAKLEY, *D. C.*

But to the reading of the same in evidence the attorneys for the said defendant, in his behalf, did then and there object, because the deed fails to show in what State the land it purports to convey is is situated; and further, that said deed has never been recorded in Florida. But the said judge did then and there deliver his opinion and decide that the objection ought not to be allowed, and that said writing ought to be admitted in evidence on the part
51 of said plaintiffs when properly proven, and thereupon permitted the said writing to be read in evidence on the part of the plaintiffs; to which opinion and decision the defendant, by his attorneys, did then and there except.

And the plaintiffs, further to prove the issue in their behalf, introduced as a witness THOMAS A. GROOVER, who, being duly sworn, testified as follows, to wit:

My name is Thomas A. Groover. I live in the State of Georgia I have no interest in this suit. James Groover was my father. He is now dead. John Lee was my brother-in-law, and is now dead. James D. Redding was my neighbor. He lived in Brooks county, Georgia. He went off in the service during the war and died. He never came back home. His family remained in the same section of the county for a long time after the war, and he was generally reported to be dead. I know the handwriting of all three of the parties. (The deed from James Groover to Thomas A. Groover, the paper C, shown to witness.) I recognize this paper. It is a deed I received from James Groover when he sold the land described in it to me. I do not remember whether I saw it executed, but I recognize the signatures of John Lee and James Redding, witnesses. They are genuine. They are each in the usual handwriting of the respective parties. I knew John Lee's handwriting well. I did not know Redding's so well, but was somewhat familiar with it. Had business transactions with him. Bought him out once. The signature of James Groover is in his
52 usual handwriting, and I am satisfied it is a genuine signature. James Groover was in possession of the land under a title from the State of Georgia when he sold it to me. I received the possession from him when he delivered the deed to me, and I retained possession under this deed until I sold the land to my brother, Charles A. Groover.

Being cross-examined, he further says:

I do not remember what I received for the land, as I sold it with other things. I did not pay back the purchase money to Mrs. Groover, the widow and executrix of Charles A. Groover, after the passage of the act of Congress of 1872, but I gave her some money to pay attorneys' fees to defend the title.

J. J. GROOVER, being duly sworn for plaintiffs, says: My name is J. J. Groover. I live in Brooks county, Georgia. I have no pecuniary interests in this case. (Deed from Thomas A. Groover to Charles A. Groover shown to witness, and witness is requested to examine the same.) I was one of the subscribing witnesses to this deed. Thomas A. Groover signed, sealed, and delivered it in my presence and in the presence of William H. McMurray, the other subscribing witness, who is now dead. Mr. Groover executed this deed voluntarily. My father, James Groover, formerly lived on the land described in the deed, and sold it to my brother Thomas, and Thomas took possession of it from my father at the purchase. When this deed now before me was executed, Thomas A. Groover had possession of the land described in the deed, and Charles A. Groover had possession after this sale. The land was then con-
53 sidered to be in Brooks county, Georgia.

The defendant, by his attorneys, objected to the testimony of the witness that "the land was then considered to be in Brooks county, Georgia," upon the ground that the deed referred to fails to show in what State the land it purports to convey is situated, and

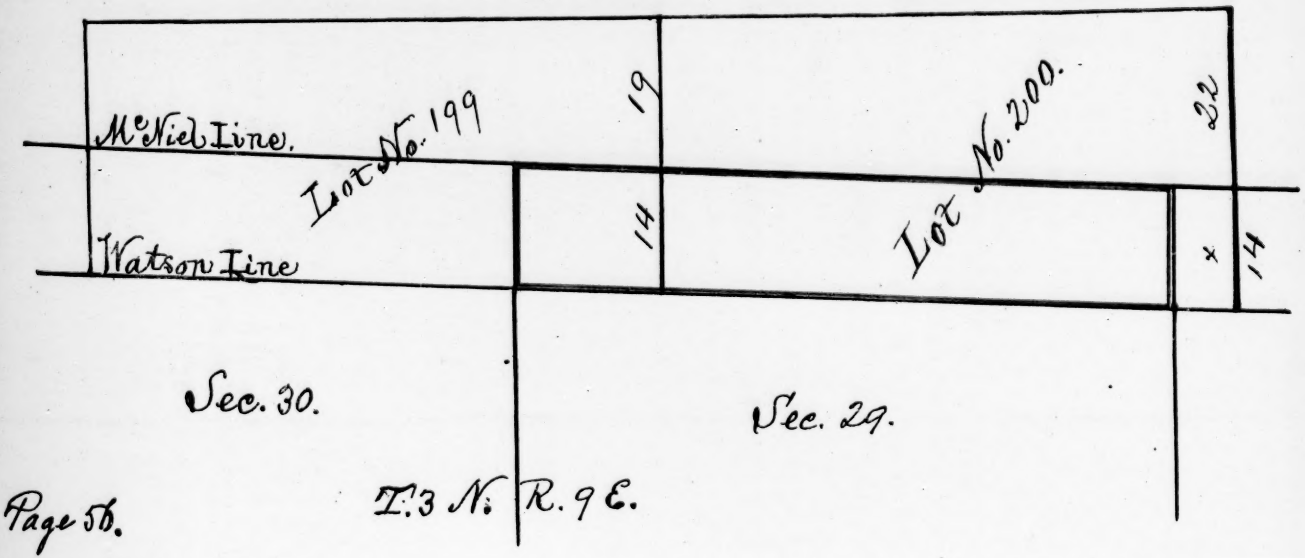
that this omission in the deed could not be supplied by parol testimony. But the said judge overruled the objection, and ruled that said testimony should be admitted; to which ruling and decision the defendant, by his attorney, did then and there except.

And said plaintiffs, further to prove the issue on their behalf, introduced as witness JAMES A. BENTLEY, who, being duly sworn, testified as follows, to wit: I moved to this county in 1859, and into Brooks county, Georgia. Mr. Tom Groover was at that time living on the place now in dispute. He sold the place to Mr. Charles Groover, who lived there till he died in 1866. Both Charles and Tom Groover cultivated all the lands. Mrs. Groover continued there with her children till 1875 or 1876, when Mr. Coffee took possession, living on and cultivating the place. Some of my lands are in Florida, and I pay taxes on them. I don't know what the taxes amount to. I consider the diagram [E] as a good description of the land in dispute. The McNeil line was a badly blazed line, and the Watson line was a well blazed line. The Watson line was considered as the State line between the States of Georgia and
54 Florida. Georgians worked the roads down to the Watson line, and Floridians worked the Florida roads up to the Watson line.

And the plaintiffs, further to prove the issue in their behalf, introduced as a witness, EVERETT P. GROOVER, who, being duly sworn, says: I am one of the plaintiffs in this cause. I know the land in controversy. My father moved on the place, of which this is a part, just before the late war. I was very young at the time. My father was Charles A. Groover. Thomas A. Groover, an uncle of mine, lived on the place before my father moved there. My father bought it from my uncle, Thomas A. Groover.

And thereupon the plaintiffs' attorney handed witness a plat, marked "E," and asked him if he recognized it, and if so, to explain it, and point out the different lands thereon. The plat "E," which is hereto attached as a part of this bill, was also shown to the jury, and the witness, by means of it, and with it in his hands, further testified as follows: "The land in dispute is the land on the plat, bounded on the north by the McNeil line, on the south by the Watson line, on the east by the eastern boundary of section 29, T. 3 N., R. 9 E., and by the western boundary of the same section on the west. The lots, according to the Georgia description, cover a part of this land on the plat. The line between lots 199 and 200 is as marked on the plat. The land in dispute includes twenty-two and three-fourths acres of said lot 199, and ninety-eight acres of lot 200, making about 120 acres in all. The survey, of which this
55 paper is a plat, was recently made by S. J. Perry, of Madison county, and this plat is a rough copy of plat made by him. I accompanied him and saw all the lines around and about the disputed land run and measured, as stated on the plat. The line between lots 199 and 200 measured 19 chains from the north line of said lots to the McNeil, and 14 more, or 33 in all, to the Watson line. On the eastern boundary of lot 200 this line measures 22 chains

("E")


McNiel Line.
Lot No. 199
19
Lot No. 200.
22
Watson Line
14
Lot
x
14
Sec. 30.
Sec. 29.
T. 3 N. R. 9 E.

Page 56.

from the northern of said lot to the McNeil line, and 14 chains from the McNeil line to the Watson line. My father, Charles A. Groover, was in possession of the lands in his lifetime, and planted a part of them. He died in the year 1866, at his residence north of the land in dispute. The following were his children and heirs, to wit: James M. Groover, who was born in 1850; Sallie E. McIntosh, wife of Thomas J. McIntosh, who was born in 1852; Everett P. Groover, who was born in 1854; Georgia C. McIntosh, wife of Charles A. McIntosh, who was born in 1856; Annie E. Groover, who was born in 1858; Charles A. Groover, who was born in 1862; and Alice Groover, who was born in 1864. Annie E. Groover is dead; she died last fall; she was over twenty-one years when she died. My mother, the widow of Charles A. Groover, is still living. A. J. Coffee got in possession of the land in dispute after my father's death, about the year A. D. 1876, against our will, and still holds possession of the same. We have possession of the rest of the lands in lots 199 and 200, including the portion of lot 199 lying below the McNeil
56 line and down to the Watson line, under the title from Thomas A. Groover. Coffee has made seven crops on the land in dispute since he got possession of it. There are about 80 acres of the land fit for cultivation. Rents are not as high in that neighborhood as they were when he first went into possession. Lands were worth $2.00 per acre for rent when he went into possession. A fair average rental for the seven years would be at the rate of $1.75 per acre for the tilliable land; that is, the open land. The southeast corner of the land in dispute is in a pond. There is very little swamp on the southern boundary of this land.

"E."—See diagram.

All of lots 199 & 200, except the portion surrounded by the *red line*, in possession of pl't'ffs.

A. H. HANSEL, being duly sworn for plaintiffs, says: I live in Thomas county, Georgia. I am judge of the judicial circuit in which I reside, and have been for many years. Have been connected with the courts in the part of Georgia where I now live, in the counties bordering upon Florida, ever since 1847, as a practising lawyer, solicitor general, and judge of the circuit, and have been
57 familiar with the business and jurisdiction of the courts in these counties; know something of the different lines between Georgia and Florida; know the Watson line; it is the lower of the three lines, and the line to which Georgia claimed and exercised jurisdiction until the Orr & Whitner line was agreed upon as the boundary line by the two States. As far back as I recollect, Georgia claimed jurisdiction to the Watson line. The people living north of that line did jury duty, and voted in Georgia. When people living there died their wills were probated in our courts of ordinary, and their estates were administered upon in our courts. Our courts took jurisdiction of offences committed as far south as the Watson line, and tried cases in which people living there were interested.

The officers of the Georgia courts executed writs as far south as this line. Remember cases in which citizens were tried for offences against our laws committed on the northern side of this line on their places, who were afterwards, by the settlement of the boundary line, recognized and considered as citizens of Florida. (The Georgia grants, marked A & B, exhibited to witness.) I am familiar with grants of this class, and the mode in which land is laid off in lots in Georgia. The line marked upon these plats as the Georgia line is the line known as the Watson line. Georgia surveyed her lots as far south as this line, and the lower tier, when cut short by the Florida line, were called fractional lots, and did not contain the full number of acres that the other lots contained.

And upon cross-examination the said witness further testi-
58 fied as follows: I know nothing personally of the land in litigation. Don't know that I was ever upon it. I do not know who ran the Watson line; suppose it was a man named Watson; can't say whether he was a Georgia or Florida or United States surveyor. The line was run before I came to the part of the State where I now live; know nothing of the surveys except as they came before me as attorney, and in the courts. Am not a surveyor.

And the plaintiffs here declare their testimony closed.

And the said defendant, by his attorneys, to prove the issues in his behalf, produced and offered in evidence a certified copy of a grant from the United States of America to the State of Florida, containing parts of the land in said grant, including fractional section twenty-nine (29) in township three (3) north, of range nine (9) east, which said certified copy of grant is in words and figures as follows, to wit:

No. 9.

The United States of America. To all whom these presents shall come, Greeting:

Whereas, by the act of Congress, approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," it is provided that all the "swamp and overflowed lands," made unfit thereby for cultivation, within the State of Florida, which remained unsold at the passage of this act, shall be granted to said State; and whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described
59 have been selected as "swamp and overflowed lands" enuring to the said State under the act aforesaid, being situated in the district of lands subject to sale at Tallahassee, Florida, to wit: Township 3 north, of range 9 east, the whole of fractional section twenty-nine, the northwest quarter of the northeast quarter and the east half of the northwest quarter of section thirty-two, the southeast quarter of the northeast quarter and the southeast quarter of section thirty-three, the southeast quarter of the northwest quarter, the southwest quarter of the northwest quarter, the west half of the southeast quarter, and the southwest quarter of section thirty-four,

the east half of the northeast quarter and the west half of the southwest quarter of section thirty-five, and the west half of the northwest quarter of section thirty-six, containing in all one thousand one hundred and eleven acres and twenty-eight hundredths of an acre, and for which the Governor of the said State of Florida did, on the twentieth day of March, one thousand eight hundred and fifty-six, request a patent to be issued to the said State, as required in the aforesaid act:

Now, therefore, know ye that the United States of America, in consideration of the premises and in conformity with the act of Congress aforesaid, have given and granted, and by these presents do give and grant, unto the said State of Florida, in fee-simple, subject to the disposal of the Legislature thereof, the tracts of land
60 above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances thereto belonging, unto the said State of Florida, in fee-simple, and to its assigns forever.

In testimony whereof, I, James Buchanan, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereto affixed.

Given under my hand at the city of Washington, the sixth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and of the Independence of the United States the eighty-second.

By the President:

[SEAL.] JAMES BUCHANAN.

By G. H. JONES, *Secretary.*

OFFICE OF COMMISSIONER OF LANDS AND IMMIGRATION,
TALLAHASSEE, FLA., *February 27th*, 1883.

I, P. W. White, commissioner of lands and immigration of the State of Florida, and the legal custodian of the books and records of the land office of said State, do hereby certify that the foregoing three pages contain a true and correct copy and transcript of the part of patent No. 9 of the United States for the land district of Tallahassee, bearing date the 6th day of July, A. D. 1857, and of the Independence of the United States of America the eighty-second, to the State of Florida, which relates to embraces the lands therein and thereby conveyed in township three north, of range nine east, according to the United States surveys of lands in said State, which said patent No. 9, from which the foregoing copy and ex-
61 tract are made, is on file in said office and in my custody.

In testimony whereof, I have hereunto placed my official signature and affixed the seal of the State of Florida land office, at the capitol, in Tallahassee, this the day and year aforesaid.

[SEAL.] P. W. WHITE,
Commissioner of Lands and Immigration.

Which said paper bears the following endorsements, to wit:

United States to State of Florida. Patent to fractional section 29

and other lands. Certified copy from State land office. Read in evidence March 7, 1883. W. C. Bird, clerk c't c't, per D. L. Oakley, D. C.

And the said defendant, by his attorney, to further prove the issue in his behalf, produced and offered in evidence an original deed from the trustees of the internal improvement fund of the State of Florida to Andrew J. Coffee, the defendant, in words and figures following, to wit:

Internal Improvement Fund, State of Florida. Deed No. 1880.

Know all men by these presents, that the trustees of the internal improvement fund, under an act of the General Assembly of the State of Florida, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6, 1855, for and in consideration of the sum of one dollar and twenty-five cents per acre, to them in hand paid by Andrew J. Coffee, of the county of Madison, State of Florida, have
62 granted, bargained, and sold, and do by these presents grant, bargain, sell, and convey unto the said Andrew J Coffee and his heirs and assigns forever the following-described lands, to wit: The whole of fractional section twenty-nine and the northwest quarter of northeast quarter of section thirty-two, in township three north, of range nine east, containing two hundred and sixty-nine $\frac{85}{100}$ acres, and lying and being in the county of Madison, in said State of Florida.

To have and to hold unto the said Andrew J. Coffee and his heirs and assigns forever in fee-simple.

In testimony whereof, a majority of said trustees have hereunto subscribed their names and affixed their seals, and have caused an impression of the seal of "The Florida State Land Office," to be made hereupon, at the capitol, in the city of Tallahassee, on this, the twelfth day of September, A. D. eighteen hundred and seventy-four.

M. L. STEARNS, [SEAL.]
Governor.
C. A. COWGILL, [SEAL.]
Comptroller.
[SEAL.] CHAS. A. FOSTER, [SEAL.]
Treasurer.
W. A. COCKE, [SEAL.]
Attorney General.
D. EAGAN, [SEAL.]
Commissioner of Lands and Immigration.

STATE OF FLORIDA, *Madison County:*

I, F. M. Scott, clerk of the circuit court in and for said county and State, do hereby certify that the foregoing deed has been duly recorded in the records of my office, in Deed Book "I," pages 126 & 127. In witness whereof, I have hereunto set my hand and seal of office, this 17th day of November, A. D. 1874.

[SEAL.] F. M. SCOTT, *Clerk.*

Which said deed bears the following endorsements, to wit:

63 Read in evidence. W. C. Bird, clerk. Read in evidence, M'ch 7, 1883. W. C. Bird, clerk, per D. L. Oakley, D. C.

And the said defendant, by his attorneys, to further prove the issue in his behalf, produced and offered in evidence an original receipt from the register of public lands for the State of Florida to McCall and Stripling, which was in words and figures as follows, to wit:

C. No. 1880. REGISTER'S OFFICE, TALLAHASSEE, *Sept.* 2, 1857.

I hereby certify that McCall and Stripling, of the county of Jefferson, State of Florida, has this day paid me in cash the sum of $100, and has executed and delivered to me his three bonds of this date, one for the sum of $94, due one year from date, one for the sum of $89, due two years from date, one for the sum of $84.58, due three years from date, said cash and bonds being for the purchase of the following lands belonging to the internal improvement fund, to wit, all of fractional Sec. 29, and N. W. ¼ of N. E. ¼ Sec. 32, T. 3, R. 9, N. and E., containing 269.85 acres, at $1.25 per acre. Title to said land is not to be made until the whole of the purchase money shall have been paid. This certificate may be assigned, but if the said purchaser or his assignee shall fail to pay either of the instalments or interest, for sixty days after it falls due, he will forfeit whatever shall have been paid, and his claim to the land, according to Sec. 5, No. 23, Acts of 1846.

D. S. WALKER,
Register of Public Lands for the State of Florida.

Which said certificate bears the following endorsement:

Read in evidence 7 M'ch, 1883. W. C. Bird, clerk.

64 And in connection with the above receipt defendant produced and offered in evidence a deed from McCall and Stripling to Andrew J. Coffee, the defendant, showing a transfer of said certificate, in words and figures following, to wit:

D.

Know all men by these presents, that we, Thomas F. McCall and James B. Stripling, of the county of Madison and State of Florida, for and in consideration of the sum of seven hundred and fifty dollars to us in hand paid by A. J. Coffee, of the same county and State, the receipt whereof we do hereby acknowledge, do by these presents give, grant, bargain, sell, and convey unto the said A. J. Coffee, his heirs and assigns, a certain parcel of land situated in the county aforesaid, and known and described as follows, to wit: All of fractional section No. (29) twenty-nine, and the northwest quarter of the northeast quarter of section (32) thirty-two, township (3) three, of range (9) nine, north and east, containing in the aggregate ($269\frac{85}{100}$) two hundred and sixty-nine eighty-five one hundredths acres more or less, together will all the privileges and appurtenances

to the said land in anywise belonging. To have and to hold the above granted premises to the said A. J. Coffee, his heirs and assigns, to his and their use and behoof forever; and we, the said Thomas F. McCall and James B. Stripling, for ourselves, our heirs, executors, and administrators, do covenant with the said A. J. Coffee, his heirs and assigns, that we are lawfully seized and possessed of the aforegranted premises; that they are free from all encumbrances; that we have good right to sell and convey the same to the said
65 A. J. Coffee as aforesaid; and that we will, and our heirs, executors, and administrators shall warrant and defend the same to the said A. J. Coffee, his heirs and assigns, forever, against the lawful demands of all persons.

In testimony whereof, we, the said Thomas F. McCall and Mary M. McCall, my wife, James B. Stripling and Mary J. Stripling, my wife, in token of their release of all rights of dower in the premises, have hereunto set our hands and seals, this twelfth day of November, A. D. 1858.

THOS. F. McCALL. [SEAL.]
JAMES B. STRIPLING. [SEAL.]
MARY M. McCALL. [SEAL.]
MARY J. STRIPLING. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES A. POWELL.
Test: J. C. BUGG, [L. S.]
Justice of the Peace.

STATE OF FLORIDA, *Madison County:*

Know all men by these presents, that we, Mary M. McCall, wife of Thos. F. McCall, and Mary J. Stripling, wife of James B. Stripling, grantors in the foregoing deed of conveyance, with intent thereby to relinquish and renounce all our dower and right of dower in and to the lands and tenements thereby conveyed; and we hereby acknowledge that the said relinquishment and renunciation of dower is made freely and voluntarily, and without any compulsion, constraint, apprehension, or fear of or from our said husbands.

Witness our hands and seals, this twelfth day of November, 1858.

MARY M. McCALL. [L. S.]
MARY J. STRIPLING. [L. S.]

JAMES A. POWELL.
Test: J. C. BUGG, *Justice of the Peace.*

STATE OF FLORIDA, *Madison County:*

Before the undersigned, a justice of the peace in and for
66 said county, personally came Mary M. McCall, wife of Thos. F. McCall, and Mary J. Stripling, wife of James B. Stripling, the grantors in the foregoing deed of conveyance, and separately and apart from their said husbands, made and executed the foregoing relinquishment and renunciation of dower.

Witness our hands and seals, this 12th day of November, A. D. 1858.

J. C. BUGGS, [L. S.] *Justice of the Peace.*

STATE OF FLORIDA, *Madison County:*

I, John C. Gambius, Jr., clerk of the circuit court in and for said county and State, do hereby certify that upon the certificate of J. C. Buggs, justice of the peace at the time of the making of his said certificate in said county and State, I have duly recorded the foregoing instrument of writing in my office, in Deed Book K, pages 49, 50, & 51.

In witness whereof, I have hereunto set my hand and affixed seal, on this 25th day of February, A. D. 1874.

JNO. C. GAMBIUS, JR., *Clerk.*

Which said paper bears the following endorsement in words and figures, to wit:

Read in evidence M'ch 7th, 1883. W. C. Bird, cl'k.

And the said defendant, by his attorneys, further to prove the issue in his behalf, introduced as a witness GIBSON S. LANIER, who, being duly sworn, testified as follows: I am the county surveyor of Madison county, Florida. I was a deputy surveyor in the State of Georgia some years ago. I have been on the lands in dispute, and have partially surveyed them. I was there last Friday and
67 surveyed the eastern and western boundary of the land in dispute. I surveyed entirely around fractional section twenty-nine (29), township three (3) north, of range nine (9) east. Said fractional section twenty-nine (29) extends to the McNeil line. I did not run the "Watson line," but I crossed it and ascertained that it passed through a large swamp, which swamp extends north nearly to the "McNeil line." A branch running southwest across said McNeil line runs into this swamp. (The Georgia plats and grants put in evidence by plaintiffs were exhibited to witness.) From an inspection of these plats I would say that these grants do not cover the land in controversy, because in Georgia the surveyor had to put down in these plats the face of the country, that is, they had to mark the ponds, swamps, branches, and other streams, and these plats do not show any swamp or bay, but one of the plats show only a little branch. If these grants, or either of them, came to the Watson line they would show the large swamp before referred to in my testimony, for the Watson line runs through a large swamp. But the plats coming down to the McNeil line only would show only the little branch which appears on one of the plats. The McNeil line is north of the Watson line, and the Orr and Whitner line is still further north. Until the establishment of the Orr and Whitner line, the McNeil line was always considered as the boundary line between Georgia and Florida. I have been living in Madison county since 1840, and have been, off and on, county surveyor ever since, and have frequently surveyed on the Georgia line, and always surveyed to the McNeil line. Never heard of the Watson line until the commencement of a controversy that led to this suit. Frac-
68 tional section thirty-nine, as originally surveyed by the United States Government, goes up to the McNeil line; I traced the

line up to the McNeil, and found the corners of the fractional section. I am familiar with Georgia surveys. The lines in Georgia are marked differently from the United States surveys. The Watson line I presume was run by some private individual. I never heard of it till recently. There was another line run south of the town of Madison, and over fifteen miles south of the Watson line. The McNeil line was considered the true line between the States, until the Orr and Whitner line was established; which last named line is north of all the lines. The land held by defendant, and claimed by plaintiffs, is south of the McNeil line, and between it and the Watson line, and away south of the Orr and Whitner line. The land in dispute is about ninety-seven acres. The whole number of acres in fractional section twenty-nine is two hundred and thirty-two acres.

And the defendant, further to prove the issue in his behalf, introduced as a witness the defendant, ANDREW J. COFFEE, who, being duly sworn, testified as follows, to wit:

I reside in Madison county, Florida, and have resided there ever since A. D. 1839. My brother, John Coffee, had the land in controversy when I came to Florida in 1839. He was tending a part of it; had it cleared; he had a claim; it was before the land was in market. Some time after I came to Florida I bought my brother's claim, and after the land was put in market, J. Bryant Stripling and J. Fain Mc-
69 Call entered it and got a certificate which they transferred to me, but the certificate was lost or mislaid, and they made a separate writing, conveying the land to me, showing that I had their interest. This was in the form of a deed to me, which is now in evidence, with the receipt from the register of the public land office of Florida. McCall and Stripling having paid all the purchase money to the State, I had the said receipt re-established by affidavits from the said McCall and Stripling, and had the trustees of the internal improvement fund to make me a deed, which deed is also in evidence. A few days ago the register's original receipt was found, and is now in evidence. Mr. Charles A. Groover had a clearing on part of the land in controversy, and I had a part of the land in cultivation that was included in my deed, and south of the "Watson line," and as there was a dispute between myself and Charles A. Groover, about the said land, we agreed to let it remain as it was till Congress would settle it, and that he, Groover, could remain in possession until that time. I paid taxes upon the whole of the land all the while, and after the act of Congress passed in 1872, confirming the Orr and Whitner line as the boundary between the States of Georgia and Florida, said Charles A. Groover having died in the meantime, Mrs. Mary A. Groover, as executrix and in her own right, bargained for the land in controversy. She agreed to pay me seven hundred dollars for it, and was to have one year to make the first payment, and one hundred
70 dollars per annum thereafter till the full amount was paid. When the time for making the first payment arrived, she, Mrs. Groover, sent for me, and I thought it was to make the payment. But she told me she would not pay me, but would keep the land; that she had been advised by her friends not to pay me. But she

said if I would take three hundred dollars and give it to my children, and make her a warranty title to the land, she would pay me that amount in cash. I then commenced suit by ejectment against Mrs. Groover, as executrix, in the circuit court in Madison county, and on her application the suit was transferred to the United States court at Tallahassee, and I obtained judgment and went into possession thereunder. I did not take the actual possession of the land north of the Watson line, nor make crops upon it, until after I was put in possession by the United States court. I have lived near the Georgia line for over forty years and never heard of the Watson line until about ten or twelve years ago. I worked the public roads up to the McNeil line, and the Georgians would work their public roads down to the McNeil line and no further south. The McNeil line was understood by citizens living near the line in both States to be the boundary line between the two States, and we knew nothing of the Watson line until a controversy arose between Rye and Walker about the lines, ten or fifteen years ago.

71 And further, to prove the issue on his behalf, the defendant offered to read in evidence the certified copy of the will of Charles A. Groover, heretofore referred to and marked; but to the introduction and reading of the same the plaintiffs, by their attorneys, did then and there object, upon the ground that the same was not properly certified, and that said will did not purport to have been proven and admitted to probate in the State of Florida. And the said judge did then and there deliver his opinion, and decide that said certified copy of said will ought not to be received in evidence. To which ruling and decision of said judge the defendant, by his attorneys, did then and there except.

The defendant then closed, and the plaintiffs introduced in rebuttal E. P. Groover, who said that he had been along the southern boundary of the land in controversy, along the Watson line when it was surveyed by Mr. Perry, and found no such swamp as Mr. Lanier testified about.

Plaintiffs then closed.

And the said parties having concluded and submitted their testimony upon the matters aforesaid, the judge of said court delivered and gave the following charge to the jury:

The land sued for, as described in the declaration, is as follows, to wit: About 77 acres in fractional lot 200, in originally Irwin county, Georgia, and about 20 acres in fractional lot 199, in the S. E. corner of said lot, in originally Irwin county, Georgia, now in Madi-
72 son county, Florida, said lots being more particularly described as 97 acres in the northern part of fractional Sec. 29, T. 3 N., of R. 9 east, lying between and bounded by the lines formerly and at different times claimed as the boundary lines between the States of Georgia and Florida, commonly known as the McNeil line and the Watson line, and extending across said Sec. 29 from east to west.

If you believe from the evidence that the State of Georgia, anterior to the year 1842, considered the land in controversy within her territorial limits, and incorporated within one of her counties, over which the authorities of said State exercised the usual powers of government; and that in 1842 the Governor of Georgia granted the identical lands in controversy to James Groover; and that said James Groover conveyed the same lands to Thomas A. Groover in 1855; and that said Thomas A. Groover conveyed the same lands to Charles A. Groover in 1860; and that said Charles A. Groover is dead and that these plaintiffs are his heirs—then you must find for plaintiffs.

But if the evidence fails to induce you to believe that the identical lands sued for are those described in said grant and conveyances, then you will find for the defendant.

In order to enable a plaintiff to recover in an action of ejectment, where his right of possession is controverted, he must prove, first, that he had the legal title to the identical premises sued for at the time of the commencement of the action; second, that he had
73 the right of entry; and third, that the defendant was in possession of the property at the time the suit was commenced. The plea of "not guilty" admits the possession by the defendant of the lands mentioned in the declaration, but does not admit that the lands mentioned in the declaration are the same as those mentioned in the grant and deeds. Whether they are the same lands or not is a question for the jury to determine from the evidence.

Unless the jury believe from the evidence that the Georgia grants include the lands in controversy, they will find for defendant.

Unless the jury are satisfied from the evidence that the Georgia grants include the lands to the "Watson line," they will find for the defendant.

If you find for the plaintiff, your verdict should state the quantity of the estate of plaintiffs, where it may be all or less than all; and describe the lands by their metes and bounds, by the number of the lot or lots, or other certain description, and also assess such damages as the evidence may show the plaintiffs entitled.

If you find for the defendant you will simply so state in your verdict.

D. S. WALKER, *Judge*. [SEAL.]

Endorsed: Filed M'ch 8th, 1883. W. C. Bird, cl'k, per D. L. Oakley, D. C.

And the said judge, under the charge and with the directions aforesaid, submitted the said issues and the evidence so given in the said trial to the jury; and the jury thereupon retired, and it being late at night, they were given the privilege of separating till next morning, with the understanding that if their verdict should
74 not be in the form required by the statute, that it should be put in form under the direction of the court. The next morning they were again called into court at the request of the plaintiffs' attorney, and an additional instruction given by the court. The

jury then retired to their room, and afterwards came into court in charge of the bailiff, and gave their verdict as follows:

"We, the jury, find for the plaintiffs, and assess their damages at five hundred dollars.

"JOHN M. HENRY, *Foreman.*"

After bringing in the verdict, the court directed plaintiffs' attorney to prepare a verdict in proper form, and the verdict as prepared was submitted to the jury, with instructions from the court to retire and examine the verdict as prepared, and if they found it to be their verdict, to bring it in as such; and the jury then retired and signed it and returned it into court, which was as follows, to wit:

We, the jury, find for the plaintiffs, and find that they are entitled to recover the interest claimed by them in the land in controversy, to wit, forty-eight-forty-ninths ($\frac{48}{49}$) of about 77 acres in fractional lot two hundred, in originally Irwin county, Georgia, and in about twenty acres in fractional lot one hundred and ninety-nine, in the southeast corner of said lot, in originally Irwin county, Georgia, all now in Madison county, Florida, said lots being more particularly described as about ninety-seven acres in the northern part of fractional section 29, T. 3 N., R. 9 E., lying between the lines formerly and at different times claimed as the boundary lines
75 between the States of Georgia and Florida, commonly known as the McNeil and the Watson lines, and extending across said section 29 from east to west, bounded on the north by the said McNeil line, south by the Watson line, east by the eastern boundary of said fractional lot twenty-nine, and west by the western boundary of said section; and the jury assess the plaintiffs' damages at five hundred dollars.

JOHN M. HENRY, *Foreman.*

And the said verdict bears the following endorsements: Groover *et al. vs.* Coffee. Verdict. Filed March 8, 1883. W. C. Bird, clerk, per D. L. Oakley, D. C.

And defendant, by his attorneys, objected to the verdict, as it was a variance from the verdict which the jury at first brought in; but the court overruled the objection, and decided that the first was not the verdict, and not received, and that the last was the verdict; and to which ruling and decision the defendant, by his attorneys, did then and there except.

And the defendant, by his attorneys, then and there, at the term of the court aforesaid, did enter in writing and submit to the said court his motion that said verdict be set aside, and that a new trial be granted, for reasons following, to wit:

1. Because the verdict of the jury is contrary to law.
2. Because the verdict of the jury is contrary to the evidence.
3. Because the verdict of the jury is contrary to the weight of the evidence.

76 4. Because there is no evidence to support the jury in finding $\frac{48}{49}$ of the land in controversy. The plaintiffs, by their

declaration, claimed all the land—the whole estate—and the evidence was for all the land. There was no evidence of $\frac{48}{49}$, or of any other part, but only the statement of counsel in argument to the jury.

5. Because, at the suggestion of the death of one of the plaintiffs, and on the revival of the suit, it was revived for the whole, and not for a part of the land; and all the evidence was upon the whole, and not a part.

6. Because when the jury came into court, their verdict was for the plaintiffs, and $500 for mesne profits, which when counsel for plaintiffs put their verdict in form he put in $\frac{48}{49}$ instead of the whole, but did not divide the $500.

7. Because when the jury came into court to render their verdict, and had it in writing, but informal, then nothing was said about a fractional part, and no evidence as such $\frac{48}{49}$.

8. Because the jury ignored the patent issued by the United States Government, and the perfect chain of title to the defendant to the land controversy.

9. Because the jury assumed that the grants to lots 199 and 200, in originally Irwin county, Georgia, embraced the land in Madison county, Florida, to which the defendant showed title from the United States—when there was no evidence to support such assumption, but there was evidence to the contrary.

10. Because the jury based their verdict upon the grants issued by the State of Georgia, and an imperfect chain of title to the
77 plaintiffs, or no chain at all.

11. Because even if the Georgia grants did include the land in controversy, the land is proved to be in Florida, and to have belonged to the United States, and Georgia had no right to convey Florida territory.

12. Because even if the Georgia grants did include the lands in controversy, there is no evidence to connect the plaintiffs with the Georgia grants; the deeds produced not even showing in what State the land therein described was or is situated.

13. Because the verdict of the jury is based upon the assumption that there is a Watson line between the States of Georgia and Florida, when there is no evidence showing that any authority for any such line exists, or ever has existed. There is no evidence to show that that line was run by Georgia, Florida, or the General Government; and so far as the evidence is concerned the Watson line is only a myth.

14. Because the evidence shows, and it is admitted, that the land in controversy is not only south of the Whitner and Orr line—the established line between the two States—but also south of the McNeil line.

And thereupon the court rendered its opinion and judgment, and overruled the said motion, and rendered the following order, to wit:

Motion for New Trial.

JAMES M. GROOVER *et al.*
vs.
ANDREW J. COFFEE. } Ejectment.

And now comes the defendant, Andrew J. Coffee, and moves for a new trial, upon the grounds set forth on the motion docket. And the plaintiffs having due notice of the same, and said motion
78 having been submitted without argument, it is considered and ordered, that said motion be, and the same is hereby, overruled and denied.

Whereupon said defendant excepted to said ruling and order, which exception is hereby noted as a part of the record in this cause.

To which ruling and judgment of the court overruling said motion for a new trial, the said defendant, by his attorneys aforesaid, did then and there except, and thereupon a final judgment for the plaintiffs was rendered and entered upon the order books of said court at the time aforesaid, in the words following, to wit:

Whereupon it is considered by the court that the plaintiffs, James M. Groover, Everette P. Groover, Thomas J. McIntosh in right of his wife Sallie E. McIntosh, and the said Sallie E. McIntosh in her own right; Charles A. McIntosh in right of his wife Georgia C. McIntosh, and said Georgia C. McIntosh in her own right; Charles A. Groover and M. Alice Groover, have an undivided estate and title in and to the lands described in said verdict, to wit: Forty-eight forty-ninths ($\frac{48}{49}$) of about 77 acres in fractional lot two hundred in originally Irwin county, Georgia, and in about twenty acres in fractional lot one hundred and ninety-nine, in the southeast corner of said lot, in originally Irwin county, Georgia, all now in Madison county, Florida, said lots being more particularly described as about ninety-seven acres in the northern part of fractional section 29, T. 3 N., R. 9 E., lying between the lines formerly and at different times claimed
79 as the boundary line between the States of Georgia and Florida, commonly known as the McNeil and Watson lines, and extending across said section twenty-nine from east to west, bounded on the north by said McNeil line, south by the Watson line, east by the eastern boundary line of said fractional lot twenty-nine, and west by the western boundary of said section, and that they do recover possession thereof from the defendant, Andrew J. Coffee.

It is further considered that the said plaintiffs do recover of the said defendant five hundred dollars for their damages, assessed as aforesaid, and fifty-seven $\frac{66}{100}$ dollars for their costs by them in their behalf expended.

And the defendant in mercy, &c.

And afterwards, on the same day, and during the term of court aforesaid, the defendant, by his attorneys, entered in open court his appeal to the supreme court of the State of Florida from the judgment aforesaid, in the words following, to wit:

JAMES M. GROOVER *et al.*
vs.
ANDREW J. COFFEE. } Ejectment.

And now at this term of the court aforesaid comes the defendant, by his attorneys, A. Paterson and T. L. Clarke, and in open court applies for and enters his appeal from the judgment herein rendered to the supreme court of the State of Florida, to be held at the city of Tallahassee on the 12th day of June, A. D. 1883.

A. PATERSON &
T. L. CLARKE,
Def't's Attorneys.

80 And moved to be allowed sixty days after the adjournment of the court within which to perfect his appeal and prepare his bill of exceptions herein. Whereupon the court granted the defendant's said motion, and made the following order in regard thereto, which was entered upon the minute-book of the court, in the words following, to wit:

And the defendant having taken his appeal from the final judgment herein to the next term of the supreme court of Florida, upon his motion, the plaintiffs being present by their attorney, S. Pasco, and making no objection thereto, it is ordered by the court that the defendant be allowed sixty days from the adjournment of this court to prepare and submit his bill of exceptions in this cause.

And inasmuch as the said several matters objected to or insisted upon and considered by the court do not appear by the record of the verdict and judgment aforesaid, the said defendant, by his attorneys aforesaid, did, after the term of the court aforesaid, by virtue of the special order herein made as aforesaid, and within the time fixed by said order and granted by the court, propose this bill of exceptions to the said opinions and decisions of the said judge, and request him to sign the same according to the form of the statute in such case made and provided, which is done, this 4th day of May, A. D. 1883.

D. S. WALKER, *Judge.*

I have examined the foregoing bill of exceptions as submitted to me by def't's att'ys this April 28, 1883, and believe the same
81 to be substantially correct.

S. PASCO,
Att'y for Pl'ffs.

And the said defendant, during the said term, in open court, applied for and entered his appeal from the said judgment to the supreme court of the State of Florida, which said entry of appeal is as follows:

JAMES M. GROOVER *et al.*
vs.
ANDREW J. COFFEE. } Ejectment.

And now at the term of the court aforesaid comes the defendant, by his attorneys, A. Paterson and T. L. Clarke, and in open court

applies for and enters his appeal from the judgment herein rendered to the supreme court of the State of Florida, to be held at the city of Tallahassee on the 12th day of June, A. D. 1883.

A. PATERSON &
T. L. CLARKE,
Def't's Attorneys.

And afterwards, to wit, on the 19th day of April, in the year of our Lord one thousand eight hundred and eighty-three (1883), the defendant filed his bond, which, with the approval thereof, is in the words and figures following, to wit:

STATE OF FLORIDA, *Madison County:*

Know all men by these presents, that we, Andrew J. Coffee, B. D. Wadsworth, and S. Sheldon Smith, are held and firmly bound unto James M. Groover, Everette P. Groover, Thomas McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, Charles
82 A. Groover, and M. Alice Groover, in the sum of one thousand and one hundred dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the eighteenth day of April, A. D. 1883.

The condition of the above obligation is such, that whereas the above bounden Andrew J. Coffee has taken his appeal from the judgment of the circuit court in and for Jefferson county to the supreme court of the State of Florida, in a certain cause wherein the said James M. Groover and the others, mentioned as obligees, were plaintiffs, and the said Andrew J. Coffee was defendant, being a suit in ejectment, transferred from Madison county, in the third judicial circuit, and tried in Jefferson county, at the spring term of said court, A. D. 1883, the verdict and judgment being in favor of the said plaintiffs and against the said defendant:

Now, if the said Andrew J. Coffee shall well and truly pay or cause to be paid the debt, damages, or condemnation and costs in case the said judgment of the circuit court shall be confirmed, then this obligation to be void, else to remain in full force and virtue.

A. J. COFFEE. [SEAL.]
B. D. WADSWORTH. [SEAL.]
S. S. SMITH. [SEAL.]

Executed in the presence of—
ANGUS PATERSON.
JNO. M. BEGGS,
Clk Cir. Court.

The above bond is approved.

W. C. BIRD,
Clerk Jeff. Ct. Ct.

83 MADISON COUNTY, *ss:*

Before me personally came B. D. Wadsworth and S. Sheldon Smith,

sureties to the foregoing bond, who, being duly sworn, say, each for himself, that he is worth more than the penalty of said bond, over and above all exemptions allowed by law, and over and above all debts and demands against him.

B. D. WADSWORTH.
S. S. SMITH.

Sworn to and subscribed before me, the 18th day of April, A. D. 1883.

[SEAL.] JNO. M. BEGGS,
Clerk Cir. Court.

I approve the above bond.

D. S. WALKER, *Judge.*

May 4th, 1883.

Which said bond bears the endorsement in words and figures following:

Groover *vs.* Coffee. Appeal bond. Filed April 19th, 1883. W. C. Bird, clerk.

Jefferson Cir't Court, 2d Judicial Circuit, Fla.

JAMES M. GROOVER *et al. vs.* A. J. COFFEE.

Bill of Costs.

Total costs to date (clerk's)..... $28 30

Monticello, June 1st, 1883.

I, W. C. Bird, clerk of the circuit court of the State of Florida, second judicial circuit, in and for the county of Jefferson, do hereby certify that the foregoing pages, numbered from one to 116, inclusive, constitute a true copy of all the proceedings, and a correct transcript of the record of the judgment in the case of J. M. Groover *et al.*, plaintiffs, and Andrew J. Coffee, defendant, as appears
84 upon the files and records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this the 11th day of June, in the year of our Lord one thousand eight hundred and eighty-three.

[SEAL.] W. C. BIRD,
Clerk of the Circuit Court for the County of Jefferson.

Upon inspection of the record in this cause, ordered: That the writ of error herein operate as a supersedeas and stay of proceedings on the judgment therein, upon the filing of a bond by the pl't'ff in error, in the penal sum of twelve hundred dollars, to secure the damages and costs, as provided by law, said bond to be approved by the judge or clerk of the cir. court of Madison county.

E. M. RANDALL, *C. J.*

June 13th, 1883.

The State of Florida to the judge of the circuit court of second judicial circuit of the State or Florida, Greeting:

Because in the record and proceedings, and also in the rendition

of judgment in a cause that was prosecuted in the circuit court held at Monticello, within and for the county of Jefferson, on the eighth day of March, A. D. 1883, between James M. Groover *et al.*, as plaintiffs, and Andrew J. Coffee, as defendant, manifest error hath happened, as it is said, to the great damage of the said An-
85 drew J. Coffee, as by his complaint appears. We, willing that the error, if any hath been, should be duly amended, and full and speedy justice done therein to the said parties, do command you that, if the judgment be therein rendered, you distinctly and openly send us the record and process of the suit aforesaid, with all things touching them, under your seal, together with this writ, so that we may have them before our justices of our supreme court of the State of Florida, to be held at Tallahassee, instanter; that, inspecting the record and proceedings aforesaid, we may, for correcting that error therein, further cause to be done what of right and according to law shall be to be done.

Witness the Honorable Edwin M. Randall, chief justice of the supreme court of the State of Florida, and the seal of said court, at Tallahassee, this 13th day of June, A. D. 1883.

[SEAL.] C. H. FOSTER,
Clerk Supreme Court.

The foregoing record bears the following endorsements, to wit:

Supreme court. Andrew J. Coffee, pl't'ff in error, *vs.* James M. Groover *et al.*, def't in error. Record. Filed June 13th, A. D. 1883. C. H. Foster, clerk.

85½ And thereafter, to wit, on the 18th day of June, A. D. 1883, the original bond of the plaintiff in error was filed, in words and figures as follows, to wit:

STATE OF FLORIDA, *Madison County:*

Know all men by these presents, that we, Andrew J. Coffee, S. S. Smith, and B. D. Wadsworth, are held and firmly bound unto James M. Groover, Everette P. Groover, Thomas McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, Charles A. Groover, and M. Alice Groover, in the sum of one thousand two hundred dollars, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the 16th day of June, A. D. 1833.

The condition of the above obligation is such, that whereas the above bounden Andrew J. Coffee has sued out a writ of error from the Supreme Court of the State of Florida to the circuit court of Jefferson county, in a certain cause wherein the said James M. Groover and others, mentioned as obligees, were plaintiffs, and the said Andrew J. Coffee was defendant, being a suit of ejectment transferred from Madison county, in the third judicial circuit, and tried in Jefferson county, at the spring term of said court, A. D. 1883, the verdict and judgment being in favor of the plaintiffs and against the said defendant:

Now, if the said defendant, Andrew J. Coffee, shall well and truly pay, or cause to be paid, the debt, damages, or condemnation money, and costs, in case the said judgment of the circuit court shall be confirmed, then this obligation to be, void else to remain in full force and virtue.

A. J. COFFEE. [SEAL.]
S. S. SMITH. [SEAL.]
B. D. WADSWORTH. [SEAL.]

Executed in the presence of—
JNO. M. BEGGS,
ANGUS PATERSON.

I do hereby approve the above bond; the parties are worth over the amount of the same.

Given under my hand and seal of office, June 16th, 1883.

[SEAL.] JNO. M. BEGGS,
Clerk Ct. Ct. Mad. Co.

86 And afterwards, to wit, on the 18th day of June, A. D. 1883, came the plaintiff in error, Andrew J. Coffee, by his counsel, and filed herein his assignment of errors, in the words and figures following, to wit:

In the Supreme Court of the State of Florida. June Term, 1883.

ANDREW J. COFFEE
vs.
JAMES M. GROOVER *et al.* } Ejectment.

Andrew J. Coffee, plaintiff in error, who was defendant in the court below, makes this his assignment of errors, and asks that the judgment of the circuit court be reversed, on the following grounds, to wit:

1st. Because the court erred in refusing to dismiss the cause on motion of the plaintiff in error, as the same cause had heretofore [been] brought, and transferred by the defendants in error to the United States circuit court, and the judgment of that court was adverse to the said defendants.

2d. Because the court erred in deciding that executors and administrators are not parties or privies with the heirs, and that a suit by the plaintiff in error and the executrix of Charles E. Groover does not bind the heirs of Charles E. Groover, but that the same suit may be gone over by the heirs.

3d. Because the court erred in sustaining the demurrer to the pleas *res adjudicata*, and dismissing the said pleas.

4th. Because two of the defendants are married women, and could not bring a suit in a common-law court in their own right, and their said husbands had no right to bring the suit independent of their wives.

87 5th. Because the court erred in deciding that a grant issued by the State of Geo. to lands outside of the State of Georgia, and within the limits of the State of Fla., is superior to a grant issued by the United

States Government to the same lands; and that parties holding the said lands in Fla. by said Georgia grant has superior title to one claiming under a United States Government.

6th. Because the court erred in deciding that a party holding land in Florida under a Georgia grant for a long time acquired a little superior to that of the United States Government; thereby deciding that the statutes of limitations could run against the Government.

7th. Because the court erred in admitting as evidence two deeds which do not show in what county or State the land described is situated; and it was improper to supply the deficiency by parol evidence.

8th. Because the court erred in ruling out the last will and testament of Charles E. Groover, and refusing to allow it to be read in evidence.

9th. Because the court erred in prohibiting a variance between the verdict as brought in by the jury at first and that prepared by the attorneys for defendants; the verdict of the jury being for the plaintiffs (def't's in error) and five hundred dollars damages; but the verdict as prepared by the att'y's being for $\frac{48}{49}$ of the land,
88 and the same amount of damages.

10th. Because the court erred in refusing to grant a new trial on motion of the pl'ff on the grounds in said motion stated.

June 16th 1883.

AGNES PATERSON AND
T. L. CLARKE,
Att'ys for Pl'ff in Error.

Whereupon came the parties, both plaintiff in error and defendants in error, by their respective counsel, and submitted their cause to the said supreme court upon the said transcript of the record and oral argument.

And at a subsequent day, to wit, on the 7th day of January, A. D. 1884, judgment was rendered by the said supreme court of the State of Florida, in words and figures as follows, to wit:

June Term, A. D. 1883.

Upon Writ of Error to a Judgment of the Circuit Court for 2d Judicial Circuit in and for the County of Jefferson.

ANDREW J. COFFEE, Pl't'ff in Error,
vs.
JAMES M. GROOVER, EVERETT P. GROOVER, THOMAS J. McINTOSH and Sallie E. McIntosh, his wife; Charles A. McIntosh and Georgia C. McIntosh, his wife; and Charles A. Groover and Alice M. Groover, infants, by J. M. Groover, their next friend, Def'ts in Error.

This cause having been fully heard at a previous day of this term upon the transcript of the record of the judgment afore-
89 said and the oral arguments of counsel for both parties, and the record having been seen and inspected, and the court be-

ing now fully advised of its judgment to be given in the premises, it seems to the court that there is no error in the said judgment. It is therefore considered, ordered, and adjudged by the court, that the said judgment of the circuit court is affirmed, and that the defendants in error do recover of the plaintiff in error their costs by them in this behalf expended; which is ordered to be certified to the court below.

The opinion of the court in this cause was this day read by Chief Justice Randall, and ordered to be recorded.

Ordered, That the plaintiff in error in the above entitled cause have leave to file a petition for a rehearing of said cause within ten days from the filing of the opinion herein.

E. M. RANDALL, *C. J.*

And afterwards, to wit, on the 29th day of January, A. D. 1884, came the plaintiff in error, Andrew J. Coffee, by counsel, and filed in open court before the chief justice his petition for the allowance of a writ of error to said judgment, returnable to the next term of the Supreme Court of the United States; which petition was in the words and figures as follows, to wit:

Supreme Court of the State of Florida, June Term, A. D. 1883.

ANDREW J. COFFE, Plaintiff in Error,

90 *vs.*

JAMES M. GROOVER, EVERETT P. GROOVER, THOMAS J. McINTOSH, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, Charles A. Groover, and M. Alice Groover, by their next friend, James M. Groover, Def'ts in Error.

To the Honorable Edwin M. Randall, chief justice of the supreme court of the State of Florida:

The petition of Andrew J. Coffee, pl't'ff in error in the above-stated cause, respectfully showeth that a final judgment by the said supreme court in the above-stated cause, on the 7th day of January, A. D. 1884, wherein was drawn in question the titles to certain lands on the boundary line between the States of Florida and Georgia in which the appellant claimed under a patent issued by the Government Land Office of the United States, and the respondents claimed under a grant by the State of Georgia, the said lands being within the limits of the State of Florida; and the decision of the said supreme court was in favor of the Georgia grant, and against your petitioner, who holds under the patent from the United States Government, all of which appears of record in said supreme court. Your petitioner therefore prays your honor to allow a writ of error to the pl'tff in error in the above-stated cause, returnable to the next term of the Supreme Court of the United States. The prayer of your petitioner being granted, he will ever

91 pray, &c.

ANGUS PATERSON AND
THOMAS L. CLARKE,
Attorneys for Appellant.

Whereupon, on the same day, the prayer of the petitioner was granted by an order, in words and figures as follows, to wit:

Writ of error allowed this twenty-ninth day of January, A. D. 1884.

EDWIN M. RANDALL,
Chief Justice of the Supreme Court of Florida.

And thereafter, upon the same day, upon presentation to the chief justice of said petition for the allowance of a writ of error, the same was allowed by the chief justice, as appears upon the original writ of error as accompanying this return.

And thereafter, to wit, on the 2nd day of February, A. D. 1884, and during the succeeding term of the said court, the original bond of the plaintiff in error in this writ of error, approved by the Honorable E. M. Randall, chief justice of the supreme court of the State of Florida, was filed, in words and figures as follows, to wit:

Supreme Court of the State of Florida.

ANDREW J. COFFEE, Plaintiff in Error,
vs.
92 JAMES M. GROOVER, EVERETTE P. GROOVER, THOMAS J. McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, Charles A. Groover, and Alice M. Groover, the last two minors, by their next friend, James M. Groover, Defendants in Error.

Know all men by these presents, that we, Andrew J. Coffee, William H. Dial, and Archibald Livingston, are held and firmly bound unto James M. Groover, Everette P. Groover, Thomas J. McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, Charles A. Groover, and M. Alice Groover, in the sum of two thousand dollars, to be paid to the said James M. Groover, Everette P. Groover, Thomas J. McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, Charles A. Groover, and M. Allice Groover, their heirs, executors, or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated the 30th day of January, A. D. 1884.

Whereas the above named Andrew J. Coffee hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the supreme court of the State of Florida: Now, therefore, if the above-named Andrew J. Coffee shall prosecute his said writ of error to effect, and answer all damages and costs if he should fail to make good his plea, and reverse the said judgment; then this obligation to be void, otherwise to remain in full force and virtue.

A. J. COFFEE. [SEAL.]
93 W. H. DIAL. [SEAL.]
A. LIVINGSTON. [SEAL.]

Witness:
ANGUS PATERSON.
J. P. PERRY.

We consider the security to this bond sufficient.
C. W. STEVENS & S. PASCO,
Att'ys for Def'ts in Error.

STATE OF FLORIDA, *Madison County:*

William H. Dial maketh oath that after payment of all his just debts and liabilities, and exemptions under the law he is worth in visible property, subject to levy and execution, the sum of two thousand dollars.

W. H. DIAL.

Sworn to and subscribed before me, the 30th day of January, A. D. 1884.
[SEAL.] J. PORTER PERRY,
Notary Public.

STATE OF FLORIDA, *Madison County:*

Archibald Livingston maketh oath that after payment of all his just debts and liabilities, and exemptions under the law, he is worth in visible property, subject to levy and exemption, the sum of two thousand dollars.

A. LIVINGSTON.

Sworn to and subscribed before me, the 30th day of January, A. D. 1884.
[SEAL.] J. PORTER PERRY,
Notary Public.

The within bond approved, Feb'y 2, 1884.
E. M. RANDALL,
Ch. Justice, Fla. Sup. Court.

And thereafter, to wit, on the 20th day of February, A. D. 1884, a citation was allowed by the chief justice, as appears upon the original citation accompanying this return, and the writ of error aforesaid.

94 I, Charles H. Foster, clerk of the supreme court of the State of Florida, hereby certify that the foregoing pages, numbered from one to ninety-three, inclusive, and including inserted page numbered eighty-five and one-half (85½), constituted a true copy of all the proceedings and a correct transcript of the record of the judgment of said court in the case of Andrew J. Coffee, plaintiff in error, and James M. Groover and others, defendants in error, as appears from the files and records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme court of the State of Florida, at Tallahassee, this 23d day of February, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] CHAS. H. FOSTER, *Clerk.*

95 The foregoing transcript of the record of the proceedings of the supreme court of the State of Florida in the case of Andrew J. Coffee, plaintiff in error, *versus* James M. Groover *et als.*, defendants in error, is transmitted to the Supreme Court of the United States in obedience to a writ of error issued herein, the original of which is hereto attached.

96 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida, before you, or some of you, being the highest court of law and equity of the said State in which a decision could be had, in the said suit between Andrew J. Coffee and James M. Groover, Everette P. Groover, Thomas J. McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, and M. Alice Groover, by their next friend, James M. Groover, wherein was drawn in question the titles to certain lands on the boundary line between the States of Florida and Georgia, in which the said Andrew J. Coffee claimed under a patent issued by the Government Land Office of the United States, and the said James M. Groover, Everette P. Groover, Thomas J. McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, Charles A. Groover, and M. Alice Groover, by their next friend, James M. Groover, claimed under a grant by the State of Georgia, the said lands being within the limits of the State of Florida; and the decision of the said supreme court was in favor of the Georgia grant and against the said Andrew J. Coffee, who holds under the patent from the United States Government, all of which appears of

97 record in said supreme court, a manifest error hath happened to the great damage of the said Andrew J. Coffee, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said supreme court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the thirtieth day of January, in the year of our Lord one thousand, eight hundred and eighty-four; and the clerk of the circuit court of the United States for the fifth judicial circuit, northern district of Florida.

[SEAL.] CHAS. H. FOSTER.

Clerk of the Circuit Court of the Fifth Judicial Circuit of the Northern District of Florida.

98 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to James M. Groover, Everette P. Goover, Thomas J. McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, Charles A. Groover, and M. Alice Groover, by their next friend, James M. Groover, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida, wherein Andrew J. Coffee is plaintiff in error and you are defendants in error, to show cause, if any there be, why the final judgment therein rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edwin M. Randall, chief justice of the supreme court of the State of Florida, this 20th day of February, in the year of our Lord one thousand eight hundred and eighty-four.

E. M. RANDALL,
Chief Justice of the Supreme Court of the State of Florida.

98½ [SEAL.] Attest: CHAS. H. FOSTER,
Clerk Supreme Court of Florida.

Came to hand this 27th day of February, A. D. 1884.

SMITH A. PARRAMAR,
Sheriff of Madison County.

Executed the within citation upon C. W. Stevens, one of the attorneys of the within named defendants, by delivering a true copy, and showing him the original, this day, in Madison county, Florida, February 27th, 1884.

SMITH A. PARRAMAR,
Sheriff of Madison County, State of Florida.

Came to hand this 1st day of March, A. D. 1884.

T. B. SIMKINS,
Sh'ff Jeff. Co. Fla.

Executed the within, this 1st day of March, A. D. 1884, by serving on S. Pasco, Esq., one of the att'ys of the within named defendants, a true copy, and exhibiting the within citation

T. B. SIMKINS,
Sh'ff Jeff. Co. Fla.

Sh'ff's costs, service	50
Copy	1 25
Return	10
	$1 85

99 *Opinion.*

ANDREW J. COFFEE, P. in Error,
vs.
JAMES M. GROOVER, EVERETTE P. GROOVER, Thomas J. McIntosh & Sallie E. McIntosh, his wife, Charles A. McIntosh & Georgia C. McIntosh, his wife, and Charles A. Groover and Alice M. Groover, infants, by J. M. Groover, their next friend, Def'ts in Error. } Error to Jefferson C. C.

RANDALL, C. J.:

This was an action of ejectment, brought by def'ts in error to recover lands in Madison county, and tried in Jefferson on change of venue. A former trial resulted in a verdict for plaintiff in error, which was set aside on appeal by this court in June term, 1882, (18 Fla., 61.) The second trial, in March, 1883, resulted in a verdict and judgment for plaintiffs below, def't in error, and now the defendant below brings error.

The present record brings up questions of pleading which were not before this court at the former hearing, the plaintiff below having been the appellant.

The errors assigned will be considered in their order.

I. The *first* is that the court refused to dismiss the cause on motion of defendant below, on the ground that the matter had been adjudicated in the Circuit Court of the United States in his favor.

A former recovery relating to the same cause of action as between parties and privies may be matter of defence as an estoppel, to be proved at the trial, but is not good ground of a motion to dismiss, and the motion was properly denied.

100 II. The *second* assignment of error has no foundation in the record. We do not find that the court decided that a judgment as between the plaintiff in error and the executrix does not bind the heirs of decedent. No such judgment was offered at the trial.

III. The *third* assignment is that the court erred in sustaining the demurrer to the pleas of *res adjudicata*.

In ejectment all legal defences may be made under the plea of not guilty and the special denials mentioned in the statute. (McClellan's Dig., 481.) Special pleas of matter affecting the legal title or in estoppel only encumber the record and tend to embarrassment. (Wade *v.* Doyle, 17 Fla., 522; Neal *v.* Spooner, June term, 1883.) They should be struck out by the court *sua sponte*, or on motion, or on demurrer, because they are not proper pleas; but a judgment sustaining a demurrer will not preclude proof on the trial of the facts so improperly pleaded. There was no error in the ruling.

IV. The *fourth* ground of error is that two of the defendants are married women, and they cannot maintain a suit at law in their own right, nor their husbands in the right of their wives, independent of them.

This assignment we do not think applicable to the case. The husbands and their wives are joined as plaintiffs here in the right of their wives. This is the correct practice. (Tyler on Eject., 169; 1 Chitty's Pl., 82.)

V. The *fifth* ground is "because the court erred in deciding that a grant issued by the State of Georgia to lands outside of the State of Georgia, and within the limits of the State of Florida, is superior to a grant issued by the United States Government to the same lands, and that parties holding the said lands in Florida by said Georgia grant have superior title to one claiming under the U. S. Government."

101 And the *sixth* ground, "because the court erred in deciding that a party holding land in Florida under a Georgia grant for a long time acquired a title superior to that of the United States Government, thereby deciding that the statutes of limitation could run against the Government."

We do not understand this to be the ruling of the court at the trial in substance or in effect.

The testimony is substantially the same as that which was before the court upon the former trial. (See 19 Fla., 68 *et seq.*) It shows that the boundary line between Georgia and the territory and the State of Florida was uncertain and in dispute; that in 1842 Georgia granted this land to James Groover, describing it as land in what was then Irwin county, in Georgia; that the survey and plat by which the grant was made were made in 1820 by the surveyor general of Georgia; that the State of Georgia, through all the departments of its government, and the local authorities of Irwin and other counties which were created out of Irwin county, claimed and exercised control and jurisdiction of the territory as far south as the line known as the Watson line, and the courts exercised jurisdiction, civil and criminal; conveyances of land located there were recorded in Georgia; people living there were summoned as witnesses and jurors; the estates of people dying there were administered in the courts of Georgia; lands were surveyed, platted, and granted by the authority of the Government of that State down to the time of the establishment and recognition of the "Whitner and Orr" line by the States of Florida and Georgia, and by the act of Congress of April 9, 1872.

James Groover, the grantee of Georgia, was in possession of the land under the grant of 1842 at that time; and he and his
102 grantees and the plaintiffs as heirs of such grantees remained in possession, improving and cultivating it, until they were dispossessed in 1876 by Coffee, against whom this suit is prosecuted.

No definitely marked boundary line between Georgia and the Spanish province of Florida, or between Georgia and the Territory or State of Florida, had ever been recognized by the respective governments until the Whitner and Orr line was recognized by Congress in 1872. The boundary was in doubt and in dispute up to that time, when the Whitner and Orr survey, made under the authority of the respective States, was for the first time recognized,

and grants made by Georgia down to the Watson line were also recognized. (We refer to the opinion of this court in Groover *vs.* Coffee, 19th Fla. R., 61, 76, for a more detailed statement of the action of the respective State governments on the subject.)

On the part of the department below it was shown that the land in dispute was patented by the U. S. to the State of Florida July 6, 1857, under an act of Congress of Sept. 28, 1850, a "swamp and over-flowed land," it being a part of fractional section twenty-nine, in township three north, and range nine east. On Sept. 2, 1857, the register of the Florida land office issued a certificate of purchase to McCall and Stripling, who assigned and conveyed to A. J. Coffee, Nov. 12, 1858, and on the 12th Sept., 1874, the trustees of the int. imp. fund of Florida executed a deed of the said section 29 to Coffee. Coffee testifies that in 1839 his brother had a "claim" on this land, and cleared a part of it before he came into market, and he bought his brother's claim; that Charles A. Groover had a clearing also on it *north* of the Watson line, Coffee's claim being *south*
103 of that line, and Coffee never took actual possession of the portion north of said line (which portion of section 29 is the territory in dispute) until after the act of Congress of 1872. The Groovers were dispossessed in 1876 by Coffee, as appears by the testimony, and Coffee has been in possession since that time.

There is nothing in this record, nor in the history of the government of the Territory or of the State of Florida, showing that the authorities of the latter exercised any of the powers of government over this portion of section 29 lying north of the Watson line up to the time of the survey of the Whitner and Orr line, which was recognized and adopted as the boundary, Feb. 8, 1861, by the Legislatures of Georgia and Florida, and recognized by Congress in 1872.

The court and jury did not decide, as is assumed by plaintiff in error, "that a grant by Georgia of lands outside her territorial limits, and within the State of Florida, is superior to a grant by the United States Government," nor "that the statute of limitations could run against the Government." What they did decide was, that grants by a government *de facto*, of parts of a disputed territory in its possession, are valid against the State which had the right (12 Wheat., 600), and that when a territory is acquired by treaty, cession, or conquest, the rights of the inhabitants to property are respected and sacred. (Rhode Island *v.* Massachusetts, 12 Peters, 657, 749; S. C., 4 How., 591, 639; U. S. *v.* Clarke, 8 Pet., 436, 445.) And the principle applies to the States of this Union. (Poole *v.* Flugler, 11 Pet., 185, 209.) In the latter case the court says (p. 210): "Although, in the compact, Walker's line is agreed to be in future the boundary between the two States, it is not so established as having been *for the past* the true and rightful boundary."

104 We decided this to be the rule in the present case when it was before us on the former appeal (19 Fla., *supra*), and the cause was tried the second time under the influence of the opinion and judgment of this court. We find no reason for modifying that judgment; and the error assigned is not sustained.

VI. The *seventh* error assigned is that the court erred in admitting two deeds, which do not show in what county or State the land described in them is situated, and it was improper to supply the deficiency by parol.

In Atwater *v.* Schenck, 9 Wis., 160, a deed was offered which described the land, but did not mention the county or State. An offer was made to identify the land by a witness, and the court said, "this was competent evidence." To the same effect, Hogans *v.* Carruth, 18 Fla., 587, 590; Cutter *v.* Caruthers, 48 Cal., 178, 184; 2 Greenl. Ev., § 308. The oral testimony in this case clearly proved the identity of the premises and the boundaries, and this was competent evidence. The deeds in this case hardly required any such explanation by parol.

VII. "The court erred in ruling out the last will and testament of Charles E. Groover, refusing to allow it to be read in evidence."

The paper offered was certified by the ordinary of Brooks county, Georgia, that the "foregoing copy of the last will and testament of Charles A. Groover, and codicil, is a true copy from the records of this office." There is no certified copy of any proceeding of any court showing that the will had been duly proved or recorded by authority of law. McClellan's Dig., § 513; id., 987, § 8. It was not competent evidence. 2 Greenl. Ev., §§ 310, 315.

105 VIII. The *ninth* error assigned is "in permitting a variance between the verdict as brought in by the jury first and that prepared by the attorneys for plaintiffs, the verdict of the jury being for the plaintiffs (defendants in error), and five hundred dollars damages; but the verdict as prepared by the attorneys being for forty-eight forty-ninths of the land, and the same amount of damages."

The record shows that the jury brought in a verdict generally for the plaintiffs, and assessed the damages at $500, which was not entered in the record. The court then directed plaintiffs' attorney to prepare a verdict in proper form, and a verdict having been prepared was submitted to the jury, with instructions from the court to retire and examine the verdict as prepared, and if they found it to be their verdict to bring it in as such; and the jury then retired and returned it into court in writing. The jury found that the plaintiffs were "entitled to recover the interest claimed by them in the land in controversy, to wit, forty-eight forty-ninths" of the land (describing it in full), "and the jury assess the plaintiffs' damages at five hundred dollars." This verdict was recorded and judgment entered upon it.

It is evident that if the verdict as first handed to the court had been recorded and judgment entered upon it, there would have been error, as the verdict was not in compliance with the statute. It was within the power, and it was the duty of the judge before recording such verdict to recommit the matter to the jury, and call their attention to the want of form, and instruct them how to correct it. This was the effect of the action of the court. In a similar case in Maryland, after the court had adjourned for the day, the jury signed and sealed a verdict and delivered it to the clerk, and when called

to the bar next morning, before the verdict was recorded, they were sent back to correct it, as it did not determine the issues joined in the cause to their full extent, and they found a new verdict
106 which did. The court held that a judgment entered on the second verdict was correct. (Edlin *v.* Thompson, 2 Har. & Gill., 31.) The rule is that a jury may vary from or correct a verdict before they are discharged and before it is recorded. When the court put a verdict into form, and it is read to the jury, and they assent, this is sufficient. (Ropps *v.* Barker, 4 Pick., 238; Osgood *v.* McConnell, 32 Ill., 74; Wright *v.* Phillips, 2 Grum., 191; Burk *v.* Comm., 5 J. J. Marsh., 675; Proffatt on Jury Trials, §§ 456, 461, and citations.)

IX. As to the verdict for forty-eight forty-ninths of the land, the suit was commenced by seven plaintiffs, who were shown to be the children and heirs-at-law of Charles A. Groover (to whom the land was conveyed by the grantee of the original patentee from the State of Georgia), and who died in possession in 1866. Annie E. Groover, one of the plaintiffs, died since this suit was commenced, leaving the six surviving plaintiffs and her mother as her heirs-at-law. It does not appear that she was married, or that there was an executor or administrator appointed. At her death her estate descended by our statute to her mother, brothers, and sisters. (McC. Dig., 468.) Her interest in the property was one-seventh, and her mother inherited one-seventh of one-seventh, to wit, one forty-ninth, and the brothers and sisters six-sevenths, and thus they became the owners of forty-eight forty-ninths.

Before the last trial the death of Annie E. Groover was suggested upon the record, and it was ordered that the action proceed at the suit of the surviving plaintiffs.

Section 42 of Chapter 1096, Laws of 1861, (McC. Dig., 829, Sec. 73,) provides that if there be two or more plaintiffs, and one or
107 more of them should die, if the cause of action survive to the surviving plaintiffs, the action shall not be thereby abated, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiffs.

Under this statute the suit was properly continued in the names of the survivors, as their right of action to six-sevenths was not affected by the death of the co-plaintiff. At her death the legal title to six-sevenths of the one-seventh which had belonged to the deceased was vested, *cum onere*, in the survivors, and thus the entire right and title of the survivors, to wit, forty-eight forty-ninths, which had been involved in the issue, remained so. By rule 87, circuit court rules, "In case of the death of one or more of several plaintiffs in ejectment, when the right does not survive to the remaining plaintiffs, the action may proceed at the suit of the surviving plaintiff for such share of the property as he claims," or the legal representative of the deceased may be made a co-plaintiff. Under this rule the right of the mother to the one-forty-ninth not being involved in the issue, as she was not a party to the suit, of course had not survived to the remaining plaintiffs. The jury were clearly

right in finding that the plaintiffs were entitled to recover such interest in the land as was thus vested in them by law.

As to the amount of the damages assessed, it is objected that the first verdict was for the plaintiffs generally, and for the whole property, and $500 damages; and when the verdict was put in form for $\frac{48}{49}$ths, the amount of damages was not also reduced.

108 We see no substance in this objection. The jury in the first instance found that these plaintiffs had suffered damage to the amount named, and upon examination of the testimony that amount is fully supported. The testimony is that a fair average rental for the tillable land (about eighty acres) was one dollar and seventy-five cents per acre, and that Coffee had occupied it for about seven years. This testimony would sustain a much larger amount of damages in favor of these plaintiffs.

This answers the assignments of errors, as we understand them, and all the points made on the motion for a new trial. We find no error in the record, and the judgment is affirmed.

I, Charles H. Foster, clerk of the supreme court of the State of Florida, hereby certify that the above and foregoing pages, numbered from one to ten, inclusive, constitute a true and correct copy of the opinion of the said supreme court of the State of Florida, in the cause wherein Andrew J. Coffee is plaintiff in error, and James M. Groover *et als.* are defendants in error, as the same appears on file in my office in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme court of the State of Florida, this twenty-third day of February, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.] CHAS. H. FOSTER, *Clerk.*

109 Supreme Court of the United States.

ANDREW J. COFFEE, Plaintiff in Error,
vs.
JAMES M. GROOVER, EVERETT P. GROOVER, THOMAS J. McINTOSH, SALLIE E. McINTOSH, GEORGIA C. McINTOSH, CHARLES A. GROOVER, & M. ALICE GROOVER, Defendants in Error. } In Error.

Of the October Term, in the year of our Lord one thousand eight hundred and eighty-four.

Afterwards, to wit, on the second Monday in October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Andrew J. Coffee, by Angus Paterson, his attorney, and says that in the record and proceedings aforesaid there is manifest error, to wit:

110 That the supreme court of the State of Florida in the above-stated cause decided that a grant for land issued by the State of Georgia is superior to a patent issued by the United States for the same land, the said land being situate within the territorial limits of the State of Florida.

There is manifest error in this, to wit, that the supreme court of the State of Florda in the above-stated cause, by the record aforesaid it appears, held that the plaintiff in error should be ousted from certain lands embraced within the territory of the State of Florida, he holding title through the State of Florida derived from the United States, and that the defendants in error should be put in possession, they claiming under a grant issued by the State of Georgia.

There is manifest error in this, to wit, that the supreme court of the State of Florida in the above-stated cause, by the record aforesaid it appears, held that the State courts of the State of Florida had jurisdiction in said cause, notwithstanding the matter of controversy about the land had been tried and determined by the
circuit court of the United States for the northern dis-
111 trict of Florida between the plaintiff in error, and the executrix of Charles E. Groover, the ancestors under whom the defendants in error claim, and the judgment was in favor of the plaintiff in error, and there was no appeal from the said judgment.

There is also error in this, to wit:

The supreme court of the State of Florida, in the above stated cause, by the record aforesaid it appears, that the judgment aforesaid was given for the said defendants James M. Groover and others, and against the plaintiff Andrew J. Coffee.

And the said Andrew J. Coffee prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing; and that he may be restored to all things which he has lost by occasion of the said judgment.

April 14th, '84.

ANGUS PATERSON,
Att'y for Plaintiff in Error.

112 Endorsed: In the Supreme Court of the United States. Andrew J. Coffee, pl'ff in error, *vs.* James M. Groover *et al.* Assignment of errors. Supreme Court U. S. 1883, October term. No. 1281. Andrew J. Coffee, pl'ff in error, *vs.* Jas. M. Groover & *al.* Assignment of error. Filed May 3, 1884. James H. McKenney, clerk.

Endorsed on cover: Florida supreme court. No. 1281. Andrew J. Coffee, plaintiff in error, *vs.* James M. Groover, Everette P. Groover, Thomas J. McIntosh, Sallie E. McIntosh, Charles A. McIntosh, Georgia C. McIntosh, & Charles A. Groover & M. Alice Groover, by their next friend, James M. Groover. Filed 15th April, 1884.

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In the Supreme Court of the United States 1887.

ANDREW J. COFFEE

vs.

CHARLES A. GROOVER, et. al.

ANGUS PATERSON,
Attorney for Plaintiff in Error.

Madison RECORDER, Job Print, Madison, Fla.

In the Supreme Court of the United States 1887.

ANDREW J. COFFEE
vs.
JAMES M. GROOVER, *et. al.* } Writ of error to Supreme Court of the State of Florida.

STATEMENT OF THE CASE.

The land in controversy was settled by John Coffee, brother of appellant, prior to 1839, and claim sold to appellant after he came in 1839 he had a part of it cleared and planted, but the land was not in market.

When it was surveyed and put on the market it was entried by Stribling & McCall, and apellant purchased from them, and had the deed made by Trustees of Internal Improvement Fund to himself. (See Record page 36.)

Charles A. Groover had a clearing on part of the land in controversy, andhe and A. J. Coffee, appellant, agreed to await the action of Congress in the matter, which took place in 1882, but Groover at that time was dead and his wife was his executor, and offered to purchase the land from Coffee for $700.00—to have several installments, the first to be paid in one year, and went into possession of the whole of the land under this agreement, but at the end of the year refused to make the first payment, claiming the land. Coffee then brought suit in Madison county where the land lay. She had it transferred to the U. S. Court and the verdict and judgment were adverse to her, and Coffee was put in possession. Several years after that, to-wit: in the year 1880, this suit was brought against Coffee by the heirs of Charles A. Groover, brought in Madison County Circuit Court and transferred to Jefferson county, and tried by a jury and the verdict in favor of Coffee, but the Supreme Court reversed the judgment, holding that a grant from the State of Georgia is superior to the patent from the United States, to territory not belonging to the state of Georgia but to the U. S. As the judgment was not final a new trial was had in Jefferson county, and the verdict and judgment was for the Groovers under the decision of the Supreme Court. Another appeal was taken and the second judgment of the court below was affirmed, making that a final judgment. From that final judgment of the Supreme Court this appeal is taken, or writ of error issued.

The principal question involved in this case, is the boundary between the States of Georgia and Florida, and as to the title of lands in the State of Florida. The dividing line between the States of Georgia and Florida was at a very early period recognized as a line running due east from the junction of the Flint and Chattahoochee rivers to the head of the Saint Mary's river.

Hodgkiss, statute laws of Georgia, 83.

Code of Georgia [1881] 7, sec., 21.

Thompson's Digest (Fla.) 4, also 584.

Constitution of Florida (1868) Art., 1.

Brightley's Digest U. S. Laws, sec., 2.

The line was not permanently marked until A. D. 1859. This was done by B. F. Whitner on the part of Florida, and G. J. Orr, on the part of Georgia and was called the Whitner & Orr line, being the furthest north of all the lines. See plat in record page 28.

There was also a line marked by McNeil which has been noticed by both States. The State Legislature of Florida ratified all grants made by the State of Georgia that might fall south of the Whitner & Orr line, provided they did not come south of the McNeil line.

Laws of Florida 1859, chap., 1017.

There is a neighborhood line still further south called the Watson line, but is not found in the statutes of either State, and is only referred to in the act of Congress, passed to quiet titles along the line which the United States had not conveyed.

U. S. Statutes at large 1872, page 52, chap. 451.

There are none of these acts that give the State of Georgia the right to grant the land in controversy, or to make a valid deed. This land lies not only South of the Whitner & Orr line, but also south of the McNeil line and was a part of the land ceded by Spain A. D. 1819 and the United States had the right to grant this land to the State of Florida or otherwise. The Whitner & Orr line is now the acknowledged line between the States of Georgia and Florida so established and fixed by the States themselves

Laws of Florida [1859] chap. 1017.

Laws of Florida [1861] Resolution No. 16.

McClelland's Digest, page 952, sec's 8 and 11.

Code of Georgia [1861] pages 6 and 7, sec's 17 and 21.

It is the right of independent nations to establish and fix disputed boundaries between their respective territories and this right belongs to the several States of the American Union with one exception, by the consent of Congress; and persons claiming land under grants from the States are subject to the conditions of the compact made by the States.

Poole vs. Fleeger, 4 Peters, 185.

Rhode Island vs. Massachussetts, 12 Peters.

Garcia vs. Lee, 12 Peters, 511.

The land in controversy was patented by the United States to Florida A. D. 1850.

Certificate of Hugh A. Corley, Com. Lands and Immigration. This certificate is evidence and of the same force that the patent itself would be.

Laws of Florida 1875, chap. 2063.

The land had previously been surveyed and as soon as it came into market was entered by Stripling & McCall.

Certificate of D. Eagan, Com. of L. and I.

Laws of Florida [1875] chap. 2063.

But they received no deed, only a certificate which they afterwards transferred to the plaintiff in appeal who procured a deed to himself from the State and is therefore entitled to the land having a perfect chain of titles from the U. S. government to himself.

See Record page 30, 31, 32, 33 and 34.

The defendants claim title through the State of Georgia by grants issued in 1842.

See Record pages 21, 22 and 23.

The land in controversy belonged to Spain until 1819 when it was purchased by the United States, and Georgia had no more right to convey this land after it became the property of the United States than she had when it belonged to Spain, and even claiming it for a long time does not give title by occupancy. No statute of limitations will run against the government.

Angell on Lime, sec's 34 and 37.

United States vs. Hoar, Mason, 312.

It was conceded by Floridians that the McNeil line was the boundary between the two States as that line had been recognized by the States, although not adopted. See plat in Record page 28. But have never conceded that Georgia had a right to come south of the McNeil line. The Watson line was a private line drawn by some individual which cut off a large piece from Florida. See Record page 29 and 30. And if Georgia has a right to this strip of land, for the same reason she might havetaken all of the State of Florida.

The land in controversy is a part of Florida proved by the plaintiff in error and admitted by the defendant in error. It has been conveyed by the United

States and a patent issued therefor.

The line fixed by the States of Florida and Georgia and ratified by Congress is north of all the lines. See plat in Record page 28. This line is ratified by Congress in 1872. See Act of Congress statute at large 1872, page 52, chap 461.

There is no dispute as to where the boundary line is, or as to the location of the land in controversy; it is admitted to be in Florida, and south of the McNeil line, therefore a patent from the United States government to that land is superior to all others

This case was determined by the Circuit Court of the United States in 1876. See Record page 7.

The suit was brought by A. J. Coffee against Mary J. Groover, Executor of Charles E Groover, and she had full power by the will to represent the estate.

See Record page 19

And the State Court had no right to try this cause because the United States court had jurisdiction of the whole matter.

Evan's & Blade vs. Perceful 6, Ark. 428.

Elliott vs. Piersall, 1 Peters, 340, also 2 Peters 169.

The first judgment in this cause was for the plaintiff in error, by the Circuit Court of the State of Florida, in and for Jefferson county, and the Supreme Court of Florida committed an error in reversing said judgment.

Groover et. al. vs. Coffee, 19 Florida.

It was afterwards tried in the Circuit Court for Jefferson county and the verdict and judgement for the Groovers, and an appeal taken to the Supreme Court, this last judgment was affirmed, which plaintiff in error claims to be erroneous.

Coffee vs. Groover et. al., 20 Florida, 64.

The judgments of the Supreme Court should be reversed and the first judgment of the Circuit Court, of the State of Florida, in and for Jefferson county, rendered in 1882 should be affirmed.

ANGUS PATERSON,
Attorney for Plaintiff in Error.

Madison, Fla.

123-1

RECEIVED
MAR 1 1887
JAMES H. McKENNEY,
CLERK.

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vs.

JAMES M. GROOVER, ET AL., APPELLEES.

EJECTMENT BRIEF.

S. PASCO AND C. W. STEVENS,
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ANDREW J. COFFEE, APPELLANT,

vs.

JAMES M. GROOVER ET AL., APPELLEES.

This is an action of ejectment, instituted in the Circuit Court of Madison county, Florida, by J. M. Groover and his brothers and sisters, as the children and heirs at law of Chas. A. Groover, deceased, against Andrew J. Coffee, to recover a parcel of land in that county, near the Georgia line, and the profits of the land while held by Coffee. The controversy grew out of the dispute as to the true boundary between the two States. The Judge of the Circuit Court being disqualified to try the case it was regularly transferred to Jefferson county, in the adjoining circuit. The jury, under the charge of the court, found a verdict for the defendant, Coffee, and after denying a motion for a new trial, the court rendered a judgment for defendant upon the verdict. An appeal was taken from this judgment to the Supreme Court of Florida, and the judgment was there reversed and a new trial awarded. This case is reported in 19 Florida, 61.

The case was again tried in the Circuit Court of Jefferson county, under the law as declared by the appellate court, and a verdict was rendered for the plaintiffs, and against Coffee, for the portion of the land in dispute, claimed by them, and five hundred dollars damages, and the court gave judgment accordingly.

An appeal was taken by Coffee from this judgment to the Supreme Court, but not being perfected within the statutory time, it was abandoned and a writ of error was obtained by which the same purpose was accomplished, and upon a review of the case the judgment of the lower court was affirmed. The report of this second review of the case is in 20 Fla., 64.

Record, page 48. The appellant, Coffee, then petitioned the Chief-Justice of the Supreme Court to allow him a writ of error returnable to the next term of this court, and the same was allowed January Record, page 49. 29th, 1884.

No grounds are set forth in this petition why the writ of error should be granted, nor do any appear in the order of the Chief Justice. In his description of the case, Coffee mentions incidentally that there is drawn in question the titles to certain lands on the boundary lines between the States of Georgia and Florida, and that he claimed under a patent issued from the Land Office of the United States, while the appellees claimed under a grant from the State of Georgia, and that the decision was against him, and it is presumed that he obtained his writ of error upon these allegations.

The writ seems to have been granted upon the idea that the case comes under the terms of the Judiciary act of 1789, section 25 re-enacted as section 2 of the act of February 14th, 1867, and in the belief that it does not, the appellees first desire to raise the question of the jurisdiction of the court.

The theory of the appellant must be that he can bring his case to this court because the issue of the patent, upon which his chain of title depends, from the United States Land Office, was the exercise of an authority under the United States, and that the failure of his title amounted to a decision against the validity of the patent. There was no decision against the validity of the patent, and the act certainly was not intended to draw within the jurisdiction of this court for final determination every case of ejectment where the failing party traces his title back to the government as the original owner. The affirmative acts or negligence of some subsequent holder may have given the advantage to another claimant whose original source of title was different.

Record, pages 21 and 22. In this case the appellee's chain of title dates from 1842. The United States patent issued in 1857, and in the same year Record, page 30. Record, page 33. McCall & Stripling bargained with the Register of Public Lands for the State of Florida, for the land, but neither they Record, page 37. nor those claiming under them ever obtained possession of a portion of the lands in dispute, as the record shows, until 1876, Coffee's own testimony. so that after the title passed out of the government, and after the Coffee claim originated, the Groovers held undisputed possession for nineteen years under a paper title and claim of

ownership, a period long enough to make their title good under the Florida Statute of Limitations.

But in the State Courts the case did not necessarily turn upon the patent or its effect. Florida's own action gave to the Groovers whatever title she acquired by the patent. She expressly withheld her lands in this disputed territory from the market until the settlement of the boundary line between the two States.

Statutes of Fla., chapter 163; third session, page 83.
Statutes of Fla., chapter 924; ninth session, page 58.

The Register had no power under the State law to make the bargain with McCall & Stripling at the time he issued his certificate to them. Later, while attempting to settle the boundary question, and before she parted with her title, she confirmed the Georgia grants to the Watson line in the occupying claimants. This was doubtless intended to be, and was an inducement to Georgia to make the final settlement, which was not favorable to her.

Statutes of Fla., chapter 1017; ninth adjourned session, page 28.

There is nothing in the charge of the Judge of the Circuit Court, which controlled the verdict and judgment to show why the Groover chain of titles was preferred to the Coffee chain and this court will not entertain jurisdiction, if the judgment of the State Court can be sustained by some proposition in the record, of which it has exclusive jurisdiction.

Record, page 38.
Rector v. Ashley, 6 Wallace, 142.

It is manifest, from the opinion of the Supreme Court of Florida, that the judgment was there sustained upon the ground that Georgia had a right to grant the land superior to that of the United States, and if this court takes jurisdiction of the case, it is believed that the judgment will be here affirmed upon the same ground.

The land in controversy was never in fact a part of the State of Florida till the Orr and Whitner line, which lies north of both the McNeil and Watson lines, was agreed upon by the two States as the boundary line, and this agreement became effective by the implied ratification of Congress in 1872.

19 Fla., 81.
Acts 42d Congress, 2d session, page 52, chapter XCI.

Georgia settled the questions between her and the General Government as to the public lands within her borders by a solemn agreement April 24th, 1802, by which she ceded to the United States her territory west of the Chattahoochee river, and the government, among other things, agreed to extinguish for the benefit of Georgia the Indian claims to lands within her remaining territory. This was accomplished by different treaties with the Indians. The one which included the land in dispute was made at Fort Jackson, August 9th, 1814, by General A. Jackson with the Creeks. The territory then acquired by the legislative action of Georgia became Irwin county in 1818, and from it Thomas, Brooks and other counties were set off in later years. At this time Florida was a Spanish province.

1 Laws U. S., 488, 490.
2 Charters and Cons. of U. S., 1049, 1052, Acts 5th Congress, 2d session, 6th Congress, 1st session.
Treaty in 1 Laws of U. S., 700.
Lamar's compilation of Georgia Laws, 416.
1 Charters and Cons., pages 308, 313.

8 Statutes at Large, 138.

Her northern boundary had never been established. Its terminal points only through this section were defined.

Record, pages 22 and 23.

Whatsoever southern boundary Georgia had at this time was maintained and supported by the General Government.

The survey attached to each grant to James Groover in the record of this case shows that Georgia was in possession of the land here claimed as a part of her county of Irwin July 2d, 1820, and that her surveying party was then laying it off into lots preparatory to its sale. This was prior to the ratification of the treaty between the United States and Spain, which resulted in the purchase of Florida.

Thompson's Dig., 568.

Spain ratified this treaty October 24, 1820, and the United States February 19, 1821.

Thus it appears that the United States did not purchase the territory here in dispute from Spain, but at the exchange of flags Georgia held it as part of her original territory in which the government had for her benefit extinguished the Indian claim.

Georgia held this land for more than 21 years after her survey, and granted it, January 1, 1842, to James Groover, who took possession at once under his grant, and he and his grantees held it without interruption from that time till 1876.

Record, page 24.

Record, page 25.

Record page 29.

James Groover conveyed to Thomas A. Groover. Thomas to Charles A. Groover. Charles died in 1866, and his children and heirs at law instituted this suit. The possession remained in these parties without interruption till 1876.

6 Peters, 712.
7 Peters, 867.
8 Peters, 436, 445
9 Peters, 133.
10 Peters, 330, 712.
11 Peters, 185, 209.
12 Peters, 657, 748-9.
8 Wheat., 589.
12 Wheat., 535, 600.
4 Howard, (U. S.), 591, 639.
19 Fla., 61, 80.

The testimony and contemporaneous history show that during this period Georgia exercised her jurisdiction and sovereignty over the territory south of the boundary line as since established, as far as the southern boundary of the land herein disputed, which is the Watson line. Under these circumstances the grants were made by a government *de facto*, and we think *de jure*, until she relinquishes her right and as such they are valid and the rights so acquired are respected and sacred.

Acts 42d Congress, 2d session, page 52, chapter XCI.

2 Brightley's Dig., 401.

Such was the decision of the Supreme Court of Florida. The Congress acted in this spirit in ratifying the agreement between the States by yielding all claim of the government to the lands between the McNeil and Watson lines to the Georgia grantees, and the McNeil line is now omitted from the Georgia maps. And in 1860 Congress arranged for a settlement of all property rights growing out of the unadjusted boundary between the two States whenever the boundary line should be finally surveyed and confirmed. The situation of the land in

litigation appears on the plat in the record and is there sur- Record, page 56.
rounded by red lines.

In view of the fact that the Supreme Court of Florida has twice carefully examined and discussed the points as here presented, and has cited many authorities in support of the conclusions reached, it is not deemed necessary to do more than cite some of the authorities bearing upon the case, and ask that this court consider the cases in 19 and 20 Florida, and the citations there, which may not be included in this brief.

It remains only to consider the alleged errors mentioned by appellant in his assignment of errors. These are four in number:

1. The first assumes that the State court decided that a grant for land issued by the State of Georgia is superior to a patent issued by the United States for the same land, the same being situated within the territorial limits of Florida.

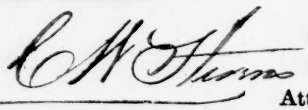
2. The second is substantially the same as the first, and both are included in the fifth alleged error of the Circuit Court, which was argued before the Supreme Court of Florida.

It is probably unnecessary to do more than to refer to what the Supreme Court says with reference to this: "We do not understand this to be the ruling of the court in substance or in effect." 20 Fla., 79.

3. This alleged error is based upon the idea that the State courts improperly took jurisdiction of the case after the matter of controversy had been tried in the United States Circuit Court having jurisdiction between the appellants and the executrix of Charles A. Grover. This must be based upon the plea which was denominated in the court below as a plea to the jurisdiction, but which was, in reality, a faulty plea of *res judicata*. This is certainly a matter that cannot be here reviewed. If it could it is enough to show that under the Florida statute all defences of this nature can be set up under the plea of not guilty, and the special plea of this matter was unnecessary and the demurrer thereto was sustained. The record is badly made up, but a careful examination will show that it was tried upon the general issue, all other pleas having been withdrawn or overruled. The appellant might, under this issue, have urged this defence and introduced evidence to sustain it, and if there had been any case tried elsewhere that was decisive of this, and that bound these parties, it should have been shown by proper evidence. The record shows that no such evidence was offered. Record, page 16. Record, pages 6, 20.

4. This is a general allegation that the judgment should have

been for Coffee and not for the Groovers, but no reasons are given so that there is nothing to controvert beyond what has already been discussed.



S. PASCO,
C. W. STEVENS,
Attorneys for Appellees.

☞ NOTE.—The pages referred to in the Record are those of the printed copy.

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JURISDICTION OF THIS COURT.

SEC. 2. "That a final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, wherein is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, or where is drawn in question the validity of a statute of or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of such, their validity, or when any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of or commission held, or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a writ of error," &c., &c.

United States Statutes-at-Large, 1867, vol. 14, page 386, sec. 2; amendment of act of 1789, Statutes-at-Large, vol. 1, page 85, section 25.

The plaintiff in error claims title under a patent from the United States, and the decision of the State court is against it.

SEC. 2. "That the titles of *bona fide* holders of land under any grant from the State of Georgia, which land may fall in this State by the foregoing line,* are hereby confirmed and conveyed to the holders, so far as any right may accrue to this State: *Provided*, Nothing herein shall apply to lands to which citizens of this State may claim title south of what is known as the McNeil line."

Fla. Laws, 1859, chap. 1017, sec. 2, pamphlet, adjourned session, 1859, page 28.

"That the titles to all lands lying south of the line dividing the States of Georgia and Florida, known as the Orr and Whitner line, lately established as the true boundary between said States, and north of the line run by Georgia, known as the Watson line, being all the lands lying between said lines, be, and the same are hereby, confirmed, so far as the United States has title thereto, in the present owners deriving titles from the State of Georgia."

U. S. Statutes at-Large (1872), page 52, chapter 91.

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* The Whitner and Orr line, referred to in Sec. 1.